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Supreme Court of the United States

OCTOBER TERM, 1962

No. 516

MALCOLM LEBERT PARKER, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 15, 1962
CERTIORARI GRANTED DECEMBER 17, 1962

SUPREME COURT OF THE UNITED STATES

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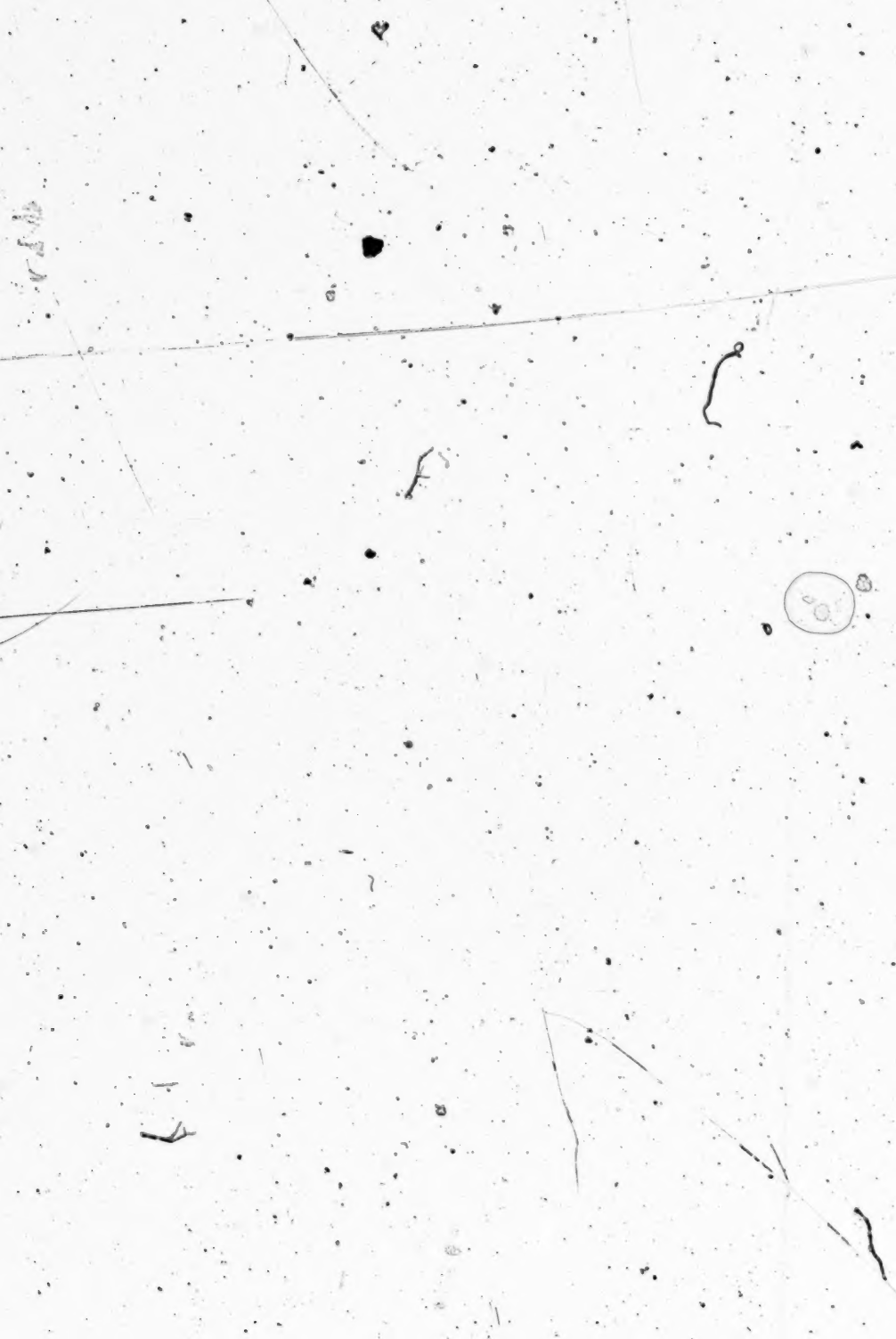

fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 13583

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

MALCOLM LEBERT PARKER, Defendant-Appellant.

Appeal from the United States District Court, for the Northern District of Illinois, Eastern Division.

Honorable Julius J. Hoffman, District Judge.

Appendix for Defendant-Appellant

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 61 CR 49

UNITED STATES OF AMERICA,

vs.

MALCOLM LEBERT PARKER.

STATEMENT REQUIRED UNDER RULE 12 (c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS

1. Indictment was filed in this matter on January 17, 1961.

2. On January 17, 1961, a bench warrant was caused to be issued and bond was fixed at $1,000.00 by Judge Joseph Perry.

3. On January 20, 1961, the defendant's attorneys filed their appearance and entered a plea of not guilty and on said date the defendant filed his appearance bond in the sum of $1,000.00.

4. On September 18, 1961, the defendant's cause was called for trial, a jury was selected and sworn. Evidence was heard for the government and at the close of the government's case, the defendant moved for a judgment of acquittal. Said motion was argued and denied by the court. Evidence was then heard for the defendant and after the defendant rested, rebuttal evidence was heard for the government. At the close of all the evidence, the defendant moved for a judgment of acquittal. Said motion was argued and denied. Final arguments were heard and the court instructed the jury. The jury retired to consider [fol. 2] its verdict and by agreement between the government and defendant, the polling of the jury was waived.

5. On September 26, 1961, the following verdict of the jury was filed, "We, the jury, find the defendant Malcolm Lebert Parker guilty as charged in the indictment." The court then entered judgment on the verdict and the oral motion of the defendant for a new trial was denied.

6. The court committed the defendant to the custody of the Attorney General for a period of two years and fined $1,000.00 and costs. The defendant to stand committed until the fine and costs are paid and bail was fixed in the sum of $5,000.00.

7. On September 26, 1961, the defendant filed his appeal bond of $5,000.00.

8. On October 3, 1961, the defendant filed his Notice of Appeal and a copy of said Notice of Appeal was mailed to the U. S. Attorney, U. S. Marshal and the U. S. Court of Appeals for the Seventh Circuit.

Respectfully submitted,

Francis Heisler and Rotenberg, Schwartzman & Richards, By: Mark L. Schwartzman, Attorneys for Appellant.

7 South Dearborn Street, Chicago 3, Illinois, RAndolph 6-1678.

UNITED STATES DISTRICT COURT

* * (Caption—No. 61 CR 49) * *

INDICTMENT—January 17, 1961

The January 1961 Grand Jury charges:

That on or about September 14, 1960, at Chicago, Illinois, [fol. 3] in the Northern District of Illinois, Eastern Division,

MALCOLM LEBERT PARKER,

defendant, being a male person who was required to and did register under the provisions of the Universal Military Training and Service Act, and who duly became a registrant at Local Board 177, Sullivan, Illinois, and was duly classi-

fied in Class 1-A-O, and was ordered to report for induction at Chicago, Illinois by said Local Board, then and there unlawfully, wilfully, knowingly and feloniously did neglect, fail and refuse to perform the duty of submitting to induction; in violation of Section 12, Universal Military Training and Service Act, Section 462, Title 50 Appendix, United States Code.

A True Bill:

Foreman Leo G. Unger

R. Tieken, United States Attorney.

WOB/sjl

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 61 CR 49) * *

ARRAIGNMENT AND PLEA

This day comes the United States by the United States Attorney comes also the defendant Malcolm Lebert Parker in his own proper person and by his counsel and being arraigned upon the Indictment filed herein against him pleads not guilty thereto and it is

Ordered that this cause be and the same is hereby set for trial on September 18, 1961 and on the defendant's own motion it is

Further Ordered that the defendant's bond be and it is hereby reduced to the sum of Five Hundred Dollars.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

ORDER AS TO JURY VERDICT—September 18, 1961

Monday: September 18, 1961

Present: Honorable Julius J. Hoffman, District Judge.

* * (Caption—No. 61 CR 49) * *

This cause this day being called for trial comes the United States by the United States Attorney comes also the defen-

dant Malcolm Lebert Parker in his own proper person and by his counsel and the jury having been selected and sworn and the trial proceeds and at the close of the government's case the defendant by his counsel moves for judgment of acquittal and the Court having heard arguments of counsel said motion is overruled and the trial proceeds and the Court now having heard all the evidence adduced by the parties and arguments of counsel finds the defendant guilty as charged in the Indictment filed herein against him.

Abstract of Proceedings

Before the Hon. Julius J. Hoffman, one of the judges of the Court in Chicago, Illinois, on Monday, September 18, 1961.

Appearances:

Hon. James P. O'Brien, United States Attorney, by Mr. William O. Bittman, Assistant United States District Attorney, representing the plaintiff;

Mr. Francis Heisler, and Mr. Mark L. Schwartzman, representing the defendant.

Opening statement on behalf of the Government by Mr. Bittman.

Opening statement on behalf of the defendant by Mr. Heisler.

[fol. 5] The Government, to maintain the issues in its behalf, introduced the following evidence, to-wit:

HELEN KENNEY, called as a witness on behalf of the Government having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Bittman:

My name is Helen Kenney. I live in Sullivan, Illinois, and I am clerk of Local Board 177, Sullivan, Illinois, Moultrie County. I have been clerk since August 11, 1958.

My duties as clerk are to process the registrants under Selective Service from the time of their registration until induction. The records of Local Board 177 pertaining to the registrants are kept under my supervision and control and contain all documents, except the registration card. The registrations cards are kept separate and are permament records. I am responsible for their safety. It is possible from Selective Service records to determine whether an individual is registered and whether he was subsequently classified because an entry is made on the back of the questionnaire and also in the local board minutes. If a registrant requests a certain classification there will be a record in his file. Any documents that he submitted were to be considered in making the classification.

The date of the local board action is indicated in the file on the back of the questionnaire on Form 100. The file would disclose whether the registrant was ordered to take a physical examination and the result thereof would also appear. The classification action of the local board is subject to appeal and if one appeals a classification that would appear in his file.

The action of the appeal board appears in the file on the appeal board record and it would be noted on the back of [fol. 6] the questionnaire as every other action is. If a registrant desires to submit a letter or other documents in writing to his local board that would appear in his file. If he were ordered to report for induction the original goes to the registrant and a copy appears in his files. If he failed to obey the order we would receive a letter from the induction station and that letter would be part of the Selective Service file. There is no transaction concerning the registrant which would not be reflected in his Selective Service file.

I am acquainted with the defendant Malcolm Lebert Parker and I see him in the Court.

(The record shows that the witness has identified the defendant Parker)

Witness continuing: Government Exhibit A for identification is the registration card of Malcolm Lebert Parker. It is kept under my supervision and control and was made

in the ordinary course of business, at the time the registrant came in at eighteen years of age to register on 9 May 1955.

(Government Exhibit A was admitted into evidence without objection)

Witness continuing: Government Exhibit B and B-1 through B-35 represents the complete Selective Service file of Malcolm Lebert Parker. This was kept under my supervision and control in the regular course of business in Local Board 177.

(The Government offers into evidence Exhibit B and B-1 through B-35 to which the defendant objects and requests voir dire examination of the witness)

Voir dire examination of Helen Kenney.

By Mr. Heisler:

I am familiar with the Selective Service regulations. [fol. 7] I followed these regulations when I prepared Mr. Parker's file.

(To defendant's question how the witness maintained the record of Defendant Parker the Government objects.)

"The Court: Mr. Heisler, I suggested to you that I will permit cross examination at this time only in respect to the admissibility of the documents. You will have a full opportunity for cross examination after the direct has been completed.

Mr. Heisler: That is exactly it, your Honor, before I make my objection.

The Court: No, no. That question does not relate to this particular document or these particular documents.

Now you may talk about only these documents; anything else, later.

Mr. Heisler: All right."

(To defendant's question how Government Exhibit B-7 got into the file of defendant Parker, the Government objects and objection is sustained.)

(To defendant's question as to who prepared Exhibit B-9, the Government objects. And the objection is sustained.)

By Mr. Heisler:

Q. In Government's Exhibit B-16 there is reference made to a hearing officer's letter. Would you please tell us whether the hearing officer's letter is included in the file of this defendant?

Mr. Bittman: Your Honor, I object to that.

The Court: Sustain the objection.

I suggest to you again, Mr. Heisler, if you persist in this kind of cross examination at this time, I will not permit you to cross examine.

Please continue.

[fol. 8] Mr. Heisler: I want to make my objections.

The Court: Go ahead. I know what you want to do, but this kind of cross examination is only at sufferance. The Court isn't obligated to permit you to cross examine at this time at all.

Mr. Heisler: I understand that, yes, but it understood yesterday, your Honor, that this witness testified that she prepared the files in accordance with the regulations.

The Court: However you understood it yesterday, I think I have made myself clear today.

Mr. Heisler: All right, your Honor.

At this time the defendant objects to the introduction into evidence of Government's Exhibits B-7, B-9, B-16 and B-28 on the ground that they were not prepared and not put into the file in accordance with the regulations of Selective Service.

(Over the objection of the defendant Government's Exhibits B-7, B-9, B-16 and B-28 are admitted into evidence. With no objection by the defendant Government's Exhibits B, B-1 through and including B-6, B-8, B-10 through and including B-15, B-17 through and including B-27, B-29 through and including B-35 admitted into evidence.)

Mr. Heisler, on behalf of the defendant asks that the record show that while defendant objects specifically to B-9, B-16 and B-28 he is objecting to the introduction of

all the documents submitted by the Government and further the defendant moves that the file be excluded because it is not complete in that the hearing officer's report to which reference is made in Exhibit B-16 is not in the file.

The Court: I will let my ruling stand in respect to the admissibility of these documents. Have you finished your cross examination of this witness?

Mr. Heisler: On that score, yes, your Honor.

[fol. 9] The Court: You may continue with your direct examination.

Mr. Heisler: May I point out that that was my voir dire in connection with my proposed objection; it is not my cross examination.

The Court: You don't have to point that out to me. I am the one who gave you the privilege to engage in it.

Mr. Heisler: That is right, because the Court asked if I had finished my cross examination."

Witness Kenney resumes direct examination: Pursuant to rules and regulations we send the original and three copies of DD Form 47 to the induction center with the order to report for induction. We also send a delivery list listing the registrant's name and his number. Government's Exhibit C is the original delivery list pertaining to Malcolm Parker and it reflects whether he submitted to induction. It is kept in a separate file. It is part of the official records of Local Board 177.

(Government offers into evidence Exhibit C to which the defendant objects. Over the objection to Exhibit C on the grounds it is hearsay and the maker available to testify, it is received in evidence.)

Cross examination of witness.

By Mr. Heisler:

Looking at Government's Exhibit No. 7 I notice that it is addressed to the appeal board. It was evidently sent to the appeal board and was placed in the registrant's file when the appeal board had that file. I assume it was sent by the signer. Under the regulations every document that is placed into the file of the registrant is listed in the cover

sheet. Looking at the cover sheet it does not seem that Exhibit B-7 is listed.

(To the defendant's question the witness who prepared the memorandum known as Exhibit B-9, the Government objects and the objection is sustained.)

[fol. 10] Government's Exhibit B-16 is the letter of the Assistant Attorney General and in the first paragraph it says "The information given by the registrant to Mr. F. M. Brittingham, a hearing officer of the Department of Justice."

(To defendant's question whether the Brittingham report so referred to in Government's Exhibit B-16 is in the file the Government objects. Objection sustained on p. 61.)

Defendant moves that the Government be ordered to produce the Brittingham file. The Court refuses to hear the motion to produce.

Motion to produce is renewed on the ground that B-16 is not a fair résumé of the Hearing Officer's report.

Defendant again moves for the production by the Government of the Brittingham report to clarify the contradictions between B-16 and B-17.

The motion to produce is denied.

Witness continuing: I am familiar with Regulation No. 1621.8 which is entitled "Preparation of cover sheet, SS Form 101". That regulation provides for the mailing of the classification to registrant and for the maintaining of the cover sheets. It provides that every paper pertaining to the registrant, except his registration card shall be filed in the cover sheet.

(To the defendant's question whether the hearing officer's report pertaining to the defendant should have been in his file in accordance with the Regulation No. 1621.8, the Government objects and the objection is sustained)

Government's Exhibit B-7 is not listed on the cover sheet.

(To defendant's question whether witness knows how document B-7 got into the defendant's file, the Government objects and the objection is sustained.)

[fol. 11] WALTER HARRY SCHUTTLER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bittman:

My name is Walter Harry Schuttler and I am a civilian employee of the United States Government since the 1st of November, 1960. Prior to that date I was a member of the armed forces of the United States, in the Army, and I retired as a captain. Prior to my retirement I was the Deputy Commanding Officer of the Armed Forces Induction Station, Chicago, Illinois, from October 10, 1955 to February 9, 1959 and again from March of 1960 until the 1st of November 1960. I served in that capacity on September 14, 1960. As Deputy Commanding Officer I was responsible for the receipt, orientation, processing, forms and allied papers for all personnel forwarded by the draft boards for physical examination or for induction into the armed forces. My duties include the supervision of the making and keeping of induction records including the processing of the inductees.

The procedure followed at the Armed Forces Induction Station is that the inductee is sent by the draft board on a certain date. He comes to headquarters, the induction station and he is told what he is going to do that day. He has to make out forms. He is given a brief physical examination, fingerprinted, taken to the ceremony room, sworn in by me and he is a member of the armed forces then. The induction ceremony requires him to take a step forward and that step forward signifies his induction into the armed forces of the United States. If a registrant refuses to be inducted he would be removed from the group and processed separately in my office. The separate cere- [fol. 12] mony of the refuser is made part of his induction record. The sergeant will notify me of the refusal and I set a time when the individual is to be brought in my presence. He comes in and I have him sit down and I explain the requirements under the law and give him an oppor-

tunity to accept induction, and go through a brief ceremony in accordance with the Army regulations at which time he makes an official refusal. After he has refused we write a letter to the U.S. District Attorney with a copy to the local board concerned, a copy to the State Director of Selective Service and a copy is kept in my files and that file is under my care and custody at the Induction Station. I brought with me certain records of the Induction Station. Exhibit C-1 is my official notification to the U.S. District Attorney that a Malcolm Lebert Parker did report for induction on September 14, 1960 and that in my presence he refused to be inducted into the armed forces. This document was prepared at my direction and was forwarded to the U.S. District Attorney.

(Government Exhibit C-1 was offered into evidence to which the defendant objects at which time the Government withdraws the offer)

Witness continuing: Exhibit C-1 is an official induction station record required to be made—by Army regulations and it is made in the regular course of business normally within a few hours after the individual has refused. They are kept under my supervision and control.

(Government offers into evidence Exhibit C-1 to which defendant objects, and thereupon the Government Attorney holds the offering of the document in abeyance.)

Witness continuing: I know the defendant Malcolm Lebert Parker. I see him in the Court room. He is the [fol. 13] young man with the light shirt, the third one in the row—the last individual in that row of three gentlemen at the second table. (The record indicates that the witness has identified the defendant in open court) Witness continues: I saw Malcolm Lebert Parker on September 14, 1960. I had a conversation with him in the presence of another registrant. That was at the Armed Forces Induction Station in my office. That took place in mid-afternoon. I asked him why he was refusing induction and he told me that he had conscientious objections to serving and I explained to him that under the Universal Military Training and Service Act he was obliged to serve or refuse induction

and I gave him an opportunity to be inducted and if he intended to refuse we would permit him to make an official refusal. I did make an official ceremony. I had him stand in front of me and I informed him very emphatically that when I read the induction ceremony if he intended to refuse induction he was not to move from the spot that he was standing on, that if he took one step forward that step constituted his induction. I asked him if he understood and he said yes. I started the ceremony by saying his name and that he was found physically and mentally—and I said "You are about to be inducted into the Armed Forces of the United States. When I call your name you will answer 'Here, Sir' and take one step forward. If you intend to refuse induction you are to remain standing exactly as you are." He did not step forward. I told him then that I am going to give him a second opportunity to take the step forward and I repeated the ceremony and he did not take the second step forward. That ended the ceremony and I asked him if he would like to make a statement in his own handwriting that he refuses to accept induction and he declined to make the statement.

[fol. 14] Subsequent to the ceremony I prepared a letter to the U.S. District Attorney—Government Exhibit C-1 is part of the official induction station records required by Army regulations to be made in the regular course of my business and it is kept under my supervision and control at the Armed Forces Induction Station.

(Government Exhibit C-1 is offered into evidence to which the defendant objects and the witness is examined.)

Voir dire examination of witness.

By Mr. Heisler:

Q. Captain Schuttler you quit the armed forces on November 1st, 1960?

Mr. Bittman: I object to the prejudicial nature of that question.

The Court: Sustain the objection.

I say to you again, Mr. Heisler, you may cross-examine at this time in respect to the admissibility of the document. Now, if you ask another question that doesn't relate to it, I will forbid any further cross-examination.

Mr. Heisler: If your Honor please, I cannot put all the questions at the same time. He testified that he had under his control—

The Court: You will have full opportunity for full cross examination later.

By Mr. Heisler:

Q. Mr. Schuttler, you had these documents you testified to under your control?

A. Yes.

Q. When you left the armed forces, you took it home and kept it in your control?

Mr. Bittman: I object to that. He has testified to that.

[fol. 15] The Court: I sustain the objection.

There will be no further cross examination at this time. You may have full opportunity to cross examine this witness after the direct examination has been completed.

Do you object to the exhibit?

Mr. Heisler: I object to it on the ground, your Honor, that it was not shown that this was in the control of this witness who testified that he quit the armed forces on November 1st. There is—that was 1960. Today is September, 1961, and nobody knows how this document came about, whether it was in the Government file or if it was put there yesterday.

The Court: The objection of the defendant to Government's Exhibit C-1 for identification will be overruled. The Court will admit into evidence Government's Exhibit C-1 for identification as Government's Exhibit C-1.

(Whereupon Government's Exhibit C-1 for identification was admitted into evidence as Government's Exhibit C-1.)

Redirect examination.

By Mr. Bittman:

I took the documents that I brought with me from the official files of the Armed Forces Induction Station. Exhibit C-2 is a special order issued by the recruiting station which lists a group of men who are en route to Fort Leonard Wood, Missouri. These men have been sworn in and are soldiers in the United States Army. The date is the 14th of September, 1960. The name of Malcolm Lebert Parker is not on the list. Exhibit C-3 is called the delivery list received in my office and it has on it the names of all the individuals being forwarded by the Local Board 177, Sullivan, Illinois. On that list the name of Malcolm Lebert Parker appears. Subsequent to the ceremony I had my staff annotate this document indicating that Parker was a [fol. 16] conscientious objector and refused induction on the 14th of September, 1960. I am required to make these documents and they are kept under my supervision and control.

(Whereupon the Government offers into evidence Exhibits C-2 and C-3 to which the defendant objects and the witness is examined.)

Voir dire examination.

By Mr. Heisler:

At the present time I am the official custodian of all documents in the Chicago recruiting main station.

(Over the objection of defendant, Government's Exhibits C-2 and C-3 are admitted into evidence.)

Direct examination.

By Mr. Bittman:

When the inductees report for induction at the induction station in Chicago they are given a physical examination. Government Exhibit B-27 is a copy of the induction record and it discloses whether or not Parker

was found fully acceptable for induction on September 14, 1960.

Cross examination.

By Mr. Heisler:

I was at the induction center from the 10th of October, 1955 until November 1st, 1960. That is about five years. During that time about forty to fifty people refused induction as conscientious objectors.

(To the question of the defendant whether there is anything in particular with reference to Parker that the witness remembers him the Government objects and objection is sustained.)

(The following proceedings were had in open court out of the presence and hearing of the jury:)

Mr. Bittman: I am prepared to rest the Government's case.

[fol. 17] Taking into consideration the full Selective Service file before your Honor, I maintain that there is a basis in fact contained in the file for defendant's 1-A-O classification.

The Court: Well, I have looked at the Government's Exhibits and I am ready to determine for the record that there is a basis in fact to support the classification. I say that on the record, Mr. Heisler.

Mr. Heisler: It is quite discouraging to me to make a motion for my directed verdict because I was ready to argue it.

The Court: I think that the Supreme Court has said that I must do that. Now if you want to try to persuade me that I am mistaken about it, I most certainly will hear you.

Mr. Heisler: All right, your Honor. I would like to do just that.

(In the presence and hearing of the jury the following proceedings were had.)

Mr. Bittman: At this point, your Honor, the Government will rest.

(Out of the presence and hearing of the jury the following proceedings were had.)

MOTION FOR JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

Mr. Heisler: May I, at this time, your Honor, present on behalf of the defendant a motion for a judgment of acquittal?

(Mr. Heisler argues in support of his motion for a judgment of acquittal.)

(Thereupon Mr. Bittman argues against the judgment of acquittal. Mr. Schwartzman presents rebuttal argument on behalf of the defendant. Mr. Bittman, on behalf of the Government replies.)

[fol. 18] The Court: The Court finds that there is a basis in fact.

The motion of the defendant made at the close of the Government's evidence for a judgment of acquittal will be denied.

Thereupon the defendant, to maintain the issues in his behalf, presented the following evidence, to-wit:

HELEN KENNEY, a witness called by and on behalf of the defendant herein, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Schwartzman:

I am the same Mrs. Helen Kenney who testified in this case. I have been Secretary of Local Board 177 since August 11, 1958. Government's Exhibit A and B-1 through B-35 represents the Selective Service file of defendant Parker.

I testified that whenever a document is received by the board it is stamped and then it is inserted in the person's file. Looking at Government's Exhibit B-7 which purports to be a letter of Leah A. Harshman, I really don't know how it got into the file. It was in the file when it was returned to the local board from the appeal board.

The file was returned from the appeal board in December, '57, and at that time I was not working for Selective Service.

Whether this document was ever at the appeal board I know only from the records. On the back of the questionnaire it shows that on October 10, 1956 the file was forwarded to the appeal board. I am familiar with the rules and regulations of Selective Service. When a document goes to the local board it is stamped with the board's [fol. 19] stamp. I suppose when the file goes to the appeal board and it receives a document that it will be stamped by the appeal board.

(The question whether the Government's Exhibit B-7 is stamped by the appeal board was objected to by the Government and objection was sustained.)

Witness continuing: When we receive a document pertaining to any registrant a notation is made on the cover sheet of the file that it was so received. There is a stamp on document B-7 itself that it was received at Local Board 177 on January 27, 1956. However, it does not happen to be on the back of the questionnaire, the stamp showing that the document was received. The regulations do not say that every action must be placed on the back of the questionnaire as far as receipts of documents. If it is stamped and placed in the file it is not always necessary to place it on the back of the questionnaire. In some cases under earlier state regulations there used to be an inventory of the contents of the questionnaire, but we are no longer required to do that.

(To the question whether there is an inventory of contents in defendant Parker's file the Government objected and the objection is sustained.)

Witness continuing: Defendant Parker was ordered on the date of December 17, 1960, to take a physical examination and the examination was on January 27, 1961.

FELIX APPOLUS HAGERMAN is called as a witness for the defendant and he states that he cannot take the oath because of his beliefs; that he can state to the Court that he will tell the truth and he affirms that he will tell the truth, nothing but the truth in his testimony in this case.

[fol. 20] FELIX APPOLUS HAGERMAN a witness called by and on behalf of the defendant herein having first affirmed to tell the truth, was examined and testified as follows:

Direct examination.

By Mr. Heisler:

My name is Felix Appolus Hagerman. I live in Sullivan, Illinois at 901 South Hamilton Street. I am assistant pastor to the Church of Jesus Christ at Sullivan. I am also an employee of Community Industries, Ltd. of the same city. I have attended the meetings of the church all my life, and am very familiar with the history of the church and its tenets. The church is sometimes referred to in the vernacular as the Harshmanite Church.

(To the question why is the Church refefred to as the Harshmanite Church, the Government objects. Objection is sustained.)

(The Court rules that the testimony of this witness as to the tenets of the church to which the defendant belongs is not a matter for the jury. The tenets of the defendant's faith which he relied on to seek the classification which he sought are contained in the Exhibits now in evidence.)

Witness continuing: I am employed by the Community Industries for about 15 years. The Church of Jesus Christ of which defendant Parker is a member is not a manufacturing organization. It was never engaged in the manufacture of any kind of products. There is a manufacturing organization known as Community Industries, this is not owned by the Church of Jesus Christ. The Community Industries is an Illinois Corporation and owned by its stock-[fol. 21] holders. The Community Industries never manufactured ammunition or war goods. The defendant Parker was employed by Community Industries in connection with

the shipping and packaging in the candy division. He never had any managerial rights or functions and he never determined what Community Industries manufactured. He is not a member of the Board of Directors. He is an hourly paid employee. I know from my own knowledge that Parker is a member of the Church of Jesus Christ of Sullivan, Illinois. He was such a member for a number of years. He has always followed all of the tenets of the Church. I know his reputation in the community where he lives. His reputation for truth and veracity, honesty and integrity was never questioned.

Community Industries employs some members of the Church of Jesus Christ of Sullivan, Illinois. It also employs other citizens of Sullivan and surrounding areas who are not members of the Church.

(To the question as to what proportion of the employees are members and what proportion of the employees are not members of the church, the Government objects and objection is sustained.)

Witness continuing: The Community Industries has three divisions. One division manufactures small garden machinery, tillers, snow blowers and riding tractors and the like. The other division manufactures dresses and related items. The third division manufactures candy items, candy bars, candy in bulk, and that sort of thing.

The Court: Do they manufacture any items for use by the Government such as tents and uniforms?

The Witness: The dress division in times past has [fol. 22] manufactured some tents. I believe this was before my managerial association with the company. In recent years some of the candy has been sold to Government sources.

The Court: Candy for army rations, isn't that right?

The Witness: I do not know that in particular rations have been sold. Some survival kits have been manufactured for us—I don't know where it was used, to be frank with you.

The Court: Do you know whether there were some valves used on naval vessels that were manufactured?

The Witness: Not since I have been with the company, sir.

The Court: You don't know whether they have ever made them?

The Witness: I know that they have never made any naval equipment for the Government.

By Mr. Heisler:

(Witness continuing). At your request, I checked the records of Community Industries to find out whether or not there was ever any kind of valve used on naval vessels and other items manufactured by the company. I have found that during World War II the division that is now manufacturing garden tractors operated as a machine shop. At that time work was done for the Crane Company in Chicago. At that time some machining was done on valves. That is all I have been able to determine from my checking in the records.

Whether those valves were ever used on naval vessels or not, I have no knowledge. The Community Industries made those valves only for the Crane Company.

Since World War II the division got out a small garden tractor and marketed it on a national basis. I don't know whether or not any of the garden tractors are bought from any of our dealers by the army or navy. I have no knowledge of that. I would doubt it somewhat if they were. [fol. 23] I don't know what the Crane Company was doing with these valves that we machined for it.

Government Exhibit B-16 says that "Community Industries does not manufacture munitions in the ordinary sense of the word." I know that the Community Industries does not manufacture munitions not in the ordinary sense of the word.

(To the question whether the witness knows that Community Industries manufactured for the navy and for the army or for the Air Force or for the Marine Corps, any items the Government objects and the objection is sustained.)

and the Court states that "this witness is uncertain about what went on in the company."

Mr. Heisler: Uncertain? I protest against that, your Honor. I don't think that he was.

The Court: He said he didn't know about things, he didn't know where these valves went after they went to their contractor.

Mr. Heisler: I thought that was very definite. It shows that this document is lying when it says that they manufactured for the Navy. They manufactured for the Crane Company, and the Crane Company could have sold it to Russia. They would not be responsible for it and it would be just as untrue as it is here now when they say that they manufactured for the navy.

(Defense attorney's question whether the witness checked the records to find whether the company ever manufactured any kind of valves or any other material for the navy or for the navy to be used on naval vessels, objected to by the Government and the objection is sustained.)

By Mr. Heisler:

Q. Mr. Hagerman, did you as assistant pastor of the [fol. 24] Church of Jesus Christ of Sullivan contact the Draft Board, Local No. 177 in that city, in connection with the registration of a member of your church, Mr. Parker?

Mr. Bittman: I object as being outside of the Selective Service file.

The Court: He may answer the question yes or no, but I am fearful of what the next question might be.

Mr. Heisler: My next question would be whether or not he ever heard of the Draft Board questioning his sincerity, honesty or integrity and veracity—

The Court: He said the defendant had a good reputation.

Mr. Heisler: No, but with reference to the Draft Board. The Draft Board may disagree with the community on reputation stories and they may have their own category for application.

The Court: You may answer the question yes or no, but I doubt that I would let you go further.

(To the question whether the witness was present and heard a Draft Board member in Sullivan make a statement that no one in Sullivan will receive a classification of 1-O

the Government objects and the objection is sustained. The jury is instructed to disregard the question.)

Mr. Heisler: May I point out, your Honor, that the Government's Exhibit which was introduced over our objection into evidence states that at least one draft board member made such a statement. So I don't believe it is an improper question, and that is the implication of his objection.

Mr. Bittman: I believe it is hearsay, Mr. Heisler.

Mr. Heisler: If it is hearsay, the Government introduced it into evidence.

The Court: I sustain the objection to the question.

[fol. 25] Witness continuing: My understanding is that during World War II the Community Industries was manufacturing candy, tents, uniforms on government contract and I know from my own knowledge that members of my church were classified at that time as full conscientious objectors and were given classification as 1-O.

(Government attorney objects to the question, the objection is sustained and the witness' answer is stricken and the jury is instructed to disregard it.)

(To the defense attorney's question whether the witness knows as assistant pastor of the church whether or not any member of the church ever accepted a draft into the armed forces as combatant or non-combatant the Government objects and the objection is sustained.)

Mr. Heisler: Can I not ask any questions and obtain any answers pertaining to the tenets of the church to which the defendant belongs who is now standing trial? Then I am not going to ask any questions further.

The Court: We have resolved that. The defendant's position with respect to the tenets of the church were contained in his file. The jury will have that file to look at when they deliberate on their verdict.

Mr. Heisler: Therefore I cannot have the assistant pastor testify to it?

The Court: We ruled on that, Mr. Heisler—that is the assistant pastor and also what-ever his other job is. We ruled on that.

Mr. Heisler: I didn't hear the ruling on that.

The Court: I sustained the objection to the inquiry.

Mr. Heisler: I see. So that the general objection—

The Court: Not a general objection. There were special [fol. 26] objections and I told you I thought the general subject might not be inquired into.

Mr. Heisler: That is all, your Honor.

MOTION TO STRIKE TESTIMONY AND RULING THEREON

Mr. Bittman for the Government in the absence of the jury moves that the Court instruct the jury to disregard any testimony given by the witness Hagerman and to strike his testimony.

The motion to strike does not include the testimony as to defendant's good character.

Proceedings in the presence of the jury.

The Court: After hearing fully the arguments of the lawyers and giving careful consideration to the legal questions involved, the Court has reached the conclusion that the jury must disregard all the testimony of the witness Felix Appolus Hagerman in so far as it pertains to the defendant's Selective Service classification, and also the jury must disregard any other testimony of that witness pertains to the defendant's religious beliefs and the tenets of the Church of Jesus Christ of Sullivan, Illinois.

Also, ladies and gentlemen of the jury, you will disregard any testimony of this witness which related to Community Industries, the employer of the witness, and to any testimony particularly which related to the products which Community Industries may or may not have manufactured.

(Defendant's objections were noted on page 260 and were overruled.)

Direct examination of Witness Hagerman.

Resumed by Mr. Heisler:

My job with Community Industries is that of Executive Vice President and Treasurer of the company.

Q. Mr. Hagerman, do you know from your own knowledge

[fol. 27] whether the Church of Jesus Christ of Sullivan, Illinois, was ever engaged in the manufacturing business?

Mr. Bittman: Your Honor.

The Court: Now, Mr. Heisler.

Mr. Heisler: The church, not the Community.

The Court: You object to that?

Mr. Bittman: I strenuously object to it.

The Court: I admonish you, Mr. Heisler.

Mr. Heisler: I thought that was a proper question.

The Court: You understand me very well.

Mr. Heisler: All right, I withdraw this witness, your Honor, and make an offer of proof, if I may.

The Court: You may make an offer of proof if you want to out of the presence of the jury.

Mr. Heisler: That is what I want.

(The jury excused.)

OFFER OF PROOF

Mr. Heisler: If this witness would have been permitted to testify, he would have testified that he knows from his own knowledge that the Church of Jesus Christ of Sullivan, Illinois, was never heretofore nor is at the present time engaged in the manufacturing of any goods either directly or indirectly, through a subsidiary, or by a manufacturing organization which the church may own: that the church owns no manufacturing industry and that it was never manufacturing any kind of goods.

The Court: What is the position of the Government in respect to the defendant's offer of proof?

Mr. Bittman: I object to the offer of proof.

The Court: I sustain the objection.

Mr. Heisler: Your Honor, the defendant intended and would have proved by this witness, Felix Hagerman, that the Selective Service classification given to defendant Par- [fol. 28] ker was the result of bias, prejudice and caprice. He particularly would have testified to it that he heard member or members of the local draft board in Sullivan, Illinois stating that no one in Moultrie County does receive a 1-O classification for various reasons.

One of the reasons, by at least one of the draft board members whose name was Mr. Bone, was that 1-O classi-

fication does not count to the draft board's quota, and in consequence, when 1-O classification is given to anyone, then another young man has to be brought in to take his place.

The second reason that draft board member stated why 1-O classification is not to be given to anyone, including the defendant, was that it is not fair that young men should go into the armed services while others, solely because of religious training and beliefs, are exempted from doing so.

A third reason that draft board members or member stated why the classification of 1-O should not be given to conscientious objectors, including the defendant here, is because his son, who is also a religious member of a church and who also believes in the teachings of Jesus Christ, did go into military service.

If this witness would have been permitted to testify he would have testified that the statement contained in Government's Exhibit B-16, written by Mr. T. O. Smith of the Attorney General's office, to the effect, that the minister of the church declared that the church would be willing to manufacture anything in wartime for the Government is not true, that the minister of the church never so stated; that the minister of the church stated that the church members are abiding by all laws adopted by the Government except those which compel them to act against their conscience and against their understanding of the [fol. 29] Commands of the Lord; that they would manufacture anything that can be used for civilian purposes because the church members under the teachings of the church do not feel that it is the responsibility of the church what happens to the material or to manufacture it if it can be used by and is basically manufactured for civilian purposes.

He would also have testified, if permitted to do so, that the Community Industries itself, which existed before it became an Illinois Corporation, and has existed since about the second World War, that it never manufactured any war material and that church members would not manufacture any material that can be used directly for destructive or for killing purposes.

He would have testified that he, as assistant pastor, believes that the members of the church would refuse to manufacture bullets, machine guns, tanks, poison gases, and any other war material that directly is used for destructive purposes.

This is the offer of proof made by the defendant.

The Court: What is the Government's position in respect to the so-called offer of proof?

(Mr. Bittman on behalf of the Government objects to the offer of proof and the objection thereto is sustained by the Court.)

MALCOLM LEBERT PARKER the defendant herein is called in his own behalf. He affirms that the testimony that he is about to give shall be the truth, the whole truth and nothing but the truth.

Direct examination.

By Mr. Heisler:

My name is Malcolm Lebert Parker I live in Sullivan, Illinois. I am 24 years of age, married, and I work at [fol. 30] Community Industries in the Lucy Ellen Candy division. My duties are to handle the packaging material for the candy bars and I am receiving clerk. I do not have anything to do with the sale or the contracting of the merchandise. I have been employed eight years by the company from the age of sixteen; before that I was delivering groceries for the grocery store maintained by the company in the evenings after school. I was delivery boy for about a year. I was born in Sullivan, Moultrie County. I am a member of the Church of Jesus Christ in Sullivan. My father and my mother are members of the Church. I remember that I was about 17 years old when I first participated actively in the work of the Church of Jesus Christ, active participation means that I became a Christian and tried to perform the duties of a Christian. I went to Powers Grade School in Sullivan and to the Sullivan High School which I attended for two years and then I dropped out. I didn't go to college.

(To the defense attorney's question whether he was exposed to any difficulties while at school because of his membership in the Church of Jesus Christ the government attorney objects, and the objection is sustained.)

Witness continues: Because of my religious training and belief I do not smoke or drink and I do not ever use force, not even in self defense.

(As to the defense attorney's question whether witness ever had opportunity to test his ability to live up to his beliefs not to use force even in self defense, the government attorney objects and the objection is sustained.)

Witness continuing: My religious beliefs today are the same that they were at the time when I was classified.

[fol. 31] (Government's attorney objects to the question and moves that the answer be stricken, motion granted.)

Witness continuing: Government's Exhibit B-1 on page 7 bears my signature.

On the same page I signed my name to conscientious objection to participation in war in any form.

Witness continuing: I recall that in Government Exhibit B-1 I asked my draft board to give me the specific form required for conscientious objectors. I received such a questionnaire. I completed this questionnaire which is Government Exhibit B-2, and signed it.

(The defense attorney's question whether or not he truthfully answered the question "That I believe in using force only if a man is insane and it will help him" was objected to by the Government and was moved to strike the answer which motion was granted and the jury was directed to disregard it.)

(The defense attorney's question whether or not it was the witness' religious belief which made him answer the question that he doesn't believe in drinking liquor or smoking or swearing or taking part in anything that has evil thought behind it; that he tries to do good to his enemies, was objected to by the Government. It was moved that it be stricken and the motion was granted.)

(The Court suggests that the defense attorney does not pursue this line of inquiry.)

Mr. Heisler: I will not pursue it if your Honor tells me that all my questions directed to the religious training and beliefs of this man if objected to will be stricken from the record.

The Court: I won't tell it to you in just that way. I think you understand clearly what questions are proper within my notion of propriety. If you want to keep on asking these questions, you ask them. I repeat, if the Government [fol. 32] does not object, I will let the witness answer. If the Government objects, I will try to determine the propriety of the question.

Witness continuing:

(The defense attorney's question whether the defendant answered the question on the basis of his religious beliefs that he holds as a command "Return good for evil, To love thy enemies and try to do them good." was objected to by the Government and a motion was made to strike the answer which motion was granted.)

By Mr. Heisler:

Q. Mr. Parker, in your questionnaire there was one question directed to you whether you believe in a Supreme Being. Do you remember that?

A. Yes, I do.

Q. And you answered that question whether you believed as follows:

"Yes, I believe in a Supreme Being. I believe that I must lead my life in complete accordance with the Bible, my conscience, and my understanding or belief. In regard to participation in war, we are commanded to love our enemies and do them good. Also the Bible tells us to return good for evil. I do not believe I can fight against my enemies and do them good. I could not in clear conscience become a member of non-combatant group in the armed forces. I feel to connect myself in any way to an organization whose main purpose is fighting would be contrary to God's command.

Was that your answer?

Mr. Bittman: I object, your Honor.

The Court: I sustain the objection.

Mr. Heisler, that document is in evidence, is it not?

Mr. Heisler: Yes, sir.

[fol. 33] Mr. Bittman: The Government introduced all these documents in evidence, your Honor.

The Court: The jury will see all of these documents. I intend to send them to the jury room for their examination.

Mr. Heisler: Your Honor, I am submitting respectfully it is now too late because the Government attorney said some of these documents are hearsay.

Mr. Bittman: Your Honor, I object. I did not say that.

Mr. Heisler: He said one of the documents prepared by this man is hearsay.

The Court: I sustain the objection.

Witness continuing: I have seen Government's Exhibit B-16 dated June 25, 1957. Government's Exhibit B-17 is the document that I prepared myself in longhand, and I submitted it to my draft board.

(Government Attorney's objections were sustained to the following questions.)

"Did you appear before a hearing officer?"

"Do you recall the name of the hearing officer before whom you appeared?"

"Did you say to the hearing officer that your objection to military service is based on the Commandment, "Thou shall not kill."?

"Did you explain to the hearing officer that the Community Industries does not manufacture munitions in the ordinary sense?"

"Did you mention anything about valves manufactured by Community Industries used on naval vessels?"

By Mr. Heisler:

Q. How old were you during World War II when it ended?

[fol. 34] Mr. Bittman: Objection.

The Court: Sustained.

(Government's objections to the following question was sustained.)

"Did you hear Mr. Brittingham stating in your presence that he would recommend to the Government that you should be given a 1-O classification?

By Mr. Heisler:

Q. In your document which is marked as Government Exhibit B-17, you informed your appeal board that Mr. Smith's statement that you refused to accept 1-A-O classification is based on the Old Testament injunction, "Thou shalt not kill" is false, is that correct?

Mr. Bittman: I object, your Honor.
The Court: I sustain the objection.

By Mr. Heisler:

Q. Do you know from your own knowledge whether or not any organization that you were connected with from the time that you were first employed at the age of 16 ever manufactured any war material?

Mr. Bittman: I object, your Honor, to the question.
The Court: Sustained.

By Mr. Heisler:

Q. Did you personally in your lifetime manufacture any war material, Mr. Parker?

Mr. Bittman: I object to the question, your Honor.
The Court: Sustained.

By Mr. Heisler:

Q. Would you manufacture war material, like bullets, machine guns, tanks, poison gas, or any other material to be used for destructive purposes?

Mr. Bittman: I object to the question, your Honor.
The Court: Sustained.

[fol. 35] (Thereupon Mr. Heisler read Government Exhibit B-17 to the jury.)

Witness continuing: I wrote Government Exhibit B-17 and I also wrote Government Exhibit B-12 that refers to a transaction on September 21, 1956. I wrote Government Exhibit B-12 a day after my appearance before the draft board.

(The Government objects and moves that the answer be stricken. Motion is granted. Jury is instructed to disregard it.)

By Mr. Heisler:

Q. Now in this document, Government Exhibit B-12, you referred to a Mr. Bone. Who was Mr. Bone?

Mr. Bittman: I object, your Honor.

The Court: I sustain the objection.

By Mr. Heisler:

Q. In this document, you said:

"Mr. Bone said they would not give a 1-O classification to anyone at the present time for he did not think it was right for another boy to have to go into service for a boy who did not believe in going into the army or non-combatant service on account of religious belief. He felt the 1-A-O classification was for conscientious objectors."

Did you write that statement?

A. Yes, I did.

Mr. Bittman: I object to that.

The Court: It is in evidence. I sustain the objection. If you want to ask him whether his signature is contained thereon, I will let you ask him.

By Mr. Heisler:

Q. Your signature appears there?

A. Yes, it does.

[fol. 36] Q. And it appears before it was filed with the draft board on October 8, right?

A. Right.

Q. At the time when you wrote this document, did you remember then what Mr. Bone stated?

Mr. Bittman: Objection.
The Court: I sustain the objection.

By Mr. Heisler:

Q. Mr. Parker, I am referring you to Government Exhibit B-16, which on page 2, in the third paragraph, in the middle thereof, alleges that you said to the hearing officer that he would not be considered immoral or a violation of their—meaning the church members' duty—to manufacture ammunition.

Did you make such a statement?

Mr. Bittman: I object, Your Honor.
The Court: I sustain the objection.

By Mr. Heisler:

Q. Did you make the statement to the hearing officer, as it is stated in Government Exhibit B-16, that the manufacture of munitions is not a matter of religious belief but merely a matter of preference?

Mr. Bittman: I object, your Honor.
The Court: I sustain the objection.

By Mr. Heisler:

Q. Mr. Parker, were you ever arrested except for the violation of the Selective Service Act?

Mr. Bittman: I object.
The Court: Sustained.
Mr. Heisler: Beg pardon?
The Court: I sustained the objection.

By Mr. Heisler:

Q. Then I ask you, were you ever charged with violating any law of the United States except the Selective Service violation?

[fol. 37] Mr. Bittman: I object, your Honor, to the question.
The Court: I sustain the objection.

(The Government objects to the following questions propounded by defense attorney.)

"Mr. Parker, do you know how this document B-7 got into the local board 177 file pertaining to you?"

"Do you know whether or not this document B-7 was ever before the appeal board?"

"As a tenet of the church that we do owe the Government any service it might demand that does not involve personal participation in the acts of war." Do you accept that as your belief?

"And whether or not the defendant accepts as his belief, that "We would not willingly engage in the production of any article used directly to cause death. That would be repugnant to our principles and mission in this world."

The Court: Mr. Heisler, I ask you not to pursue any investigation or inquiry about the tenets of the church of this registrant. You are familiar with my ruling in respect to that.

Mr. Heisler: May I then, your Honor, very humbly request—

The Court: You needn't be humble.

Mr. Heisler: I want to be very humble.

The Court: You needn't be humble. You have a right to be here.

Mr. Heisler: I want to ask this Court what can I ask this man if I cannot ask him anything about his beliefs?

The Court: I am not trying the case for the defendant. I am here as an impartial judge.

(The Government objects to defendant's answers to the questions pertaining to his answers on Exhibit B-2 as to [fol. 38] his relationship to organizations that he has been affiliated with; whether the defendant understood the notice printed on said Exhibit as to possible penalty; whether or not he did the typing of Exhibit B-2; whether the statement is his; whether the statement described the church as a Fundamentalist Group and its belief is his.)

Witness continuing:

I recall Captain Schuttler who testified here."

I recall being asked to take a step forward and I did not. At the time when I failed to step forward I did not intend to violate any law of the United States.

By Mr. Heisler:

Q. Now then, when you did not take this step forward, what was the reason that you did not do so?

Mr. Bittman: I object to the question, your Honor.
The Court: I sustain the objection.

By Mr. Heisler:

Q. Did you at that time find yourself confronted with a conflict between the law given to you by the Lord and the law given to you by man?
A. Yes.

Mr. Bittman: I object, your Honor.
The Court: I sustain the objection. If the witness made answer, I strike the answer and direct the jury to disregard it.

(The government objects to the defense attorney's question to the effect whether or not the defendant at the time of his appearance at the Induction Center believed that there was a conflict between the law of man and the law of God; and whether defendant knew at the time of his appearance for induction that there was a law in the United States which said that nothing requires any person to sub-
[fol. 39] ject to military training or service who has conscientious objections to such service, and the objection was sustained.)

(The Government objects and the objections are sustained to defense attorney's questions to the effect whether the defendant told his draft board at the time of his appearance before it on September 21, 1957 why he believed he was entitled to 1-O classification; and whether the defendant discussed at that time with the draft board members the law that he or they thought was applicable to him as a conscientious objector.)

At the time when I appeared at the induction center in 1960 we had a pre-physical and I told them that we were conscientious objectors, that we were going to refuse induction and one of the civilian officers said that we should not even be there for the fact that we were conscientious objectors.

They got out the law and read it. Then they referred us to Captain Schuttler and he took me and Nathan Jerome Harshman into his office and he brought in two witnesses and a photographer and said, "I am going to read the law to you, and if you remain where you are standing that will mean that you refuse induction. If you take a step forward that means that you accept military training." Then he read the law to us, what the penalty was and then he again read the law to us and we remained standing and he excused us. Neither Captain Schuttler nor anybody else at the induction center ever asked me, ever ordered me, ever suggested to me other than what I described that I take a step forward. Neither Captain Schuttler nor anyone else told me, Malcolm Lebert Parker, you are requested, you are ordered, you are asked to take a step forward. We told Captain Schuttler and the officer that we first met there that we are conscientious objectors and we cannot accept [fol. 40] induction for non-combatant service in the armed forces. When we told that to Captain Schuttler he told us the Government would get in touch with us and then we left the induction center.

(Objection by the Government to the question whether the defendant when he remained standing intended to violate any law of the land. The objection was sustained. The Government also objects to the question whether the defendant at the time when he remained standing where he was, did believe that under the laws of the United States he cannot be ordered to be inducted in the armed forces. The objection was sustained.)

Offer of Proof

The defendant makes an offer of proof that if he would have been permitted to answer the question put to him and objected to by the Government, and which objection

was sustained, he would have presented evidence as to those matters upon which the local board acted. He would have testified that he was born in Sullivan, Illinois of Luke and Opal Parker, both members of the Church of Jesus Christ, Sullivan, and that his parents brought him up according to the tenets of the church which church he himself joined when he was fully aware of the importance of such church tenets and when he did know that he was in full agreement and in accord with such tenets and when he was willing, able and ready to live according to such tenets. That he went to school in Sullivan and completed two years of high school from 1952 to 1954 and during these two years he was working in a grocery store and from 1954 to the present time he is employed by Community Industries in its Lucy Ellen Division, which is the candy division of the company.

He would have testified that he registered with the [fol. 41] Selective Service, that he completed his classification questionnaire and that therein truthfully and sincerely stated that "by reason of religious training and belief, I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a special form for conscientious objectors (SSS form No. 150) which I am to complete and return to the local board for its consideration," as appears on Government Exhibit B-1.

The defendant would have further testified that on said classification form he answered concerning the registrant's statement regarding classification, that "in view of the facts set forth in this questionnaire that my classification should be classification 1-O." That he made that statement after having read on said questionnaire the penalty for knowingly making a false statement.

He would have further answered the question that the statements made by him were true and he signed the same. He would have further answered if permitted to do so that he received from his local board Special Form for Conscientious Objectors, Government Exhibit B-2, and that thereon he made his claim for exemption to the effect that,

"I am, by reason of my religious training and beliefs, conscientiously opposed to participation in war, and I am further conscientiously opposed to participation in combatant and non-combatant training and service in the armed forces. I therefore, claim exemption from both combatant and non-combatant training and service in the armed forces."

He would further have testified that he learned from Government Exhibit B-2 that under the provisions of Section 6 (j) of the Universal Military Training and Service Act, as amended, he is entitled to the claim of conscientious objector to all military service. He would further have [fol. 42] testified if permitted that when he completed his special form for conscientious objectors he was because of religious training and belief conscientiously opposed to both combatant and non-combatant service in the armed forces; however, he was ready, willing and able to perform for a period of 24 consecutive months such civilian work contributing to the maintenance of the national health, safety or interest as his local board deems appropriate.

He would further have testified if permitted, that he answered the questionnaire to the effect that he believed in a Supreme Being and he received his training and acquired the belief on the basis of which he claims his exemption from combatant and non-combatant military service from his father and mother and from the Church of Jesus Christ in Sullivan, Illinois.

He would have said further that he gave the name of Leah Harshman, Pastor of the Church of Jesus Christ as the individual upon whom he relies most for religious guidance. Then he stated that he believes in using force only if a man is insane and it will help him; that he doesn't believe in using force even in self defense; that he doesn't believe in drinking liquor, smoking or taking part in anything that has evil thought behind it; that he doesn't believe in being yoked with unbelievers and that he tries to do good to his enemies; that he was raised in the Church of Jesus Christ and accepts its teachings.

He would have further testified if permitted to do so that he described the creed of his church in relation to

participation in war as follows: "Return good for evil. To love thy enemies and try to do them good. To be unyoked from unbelievers."

That he believes that he must live his life in complete accordance to the Bible, his conscience and his understanding of belief. That in regard to participation in war, [fol. 43] he is commanded to love his enemies and to do them good, also the Bible tells him to return good for evil. He doesn't believe that he can fight against his enemies and do them good. He could not in clear conscience become a member in a non-combatant status in the army. He believes that to connect himself with any organization whose main purpose is fighting is contrary to God's command of no retaliation and to Christ's command for us. He would have further testified if permitted that he stated on his questionnaire that his church belongs to the Fundamentalist group and that they share most of the basic doctrines of this group. They differ in that they have no outward ordinances such as baptism or the Lord's Supper. That they are taught to take no kind of oath, no legal affirmation. They believe in non-retaliation against evil and he was taught to overcome evil with good. That he believes that to love God and our fellow men and even our enemies fulfills the laws of God and of Christ. That he is most conscientiously bound by the teachings of Christ to his law of love. In any conflict which may occur between obedience to the law of love and the demands of other laws to which we may be subjected, he feels that he must choose obedience to the law of love.

He would have further testified if permitted to answer that he believed that his local board when it classified him on October 24, 1955 as 1-A-O, that is, one who is available for non-combatant military service, classified him wrongly and that he requested thereafter a personal appearance because "due to his religious beliefs cannot accept the 1-A-O classification" as it appears from Government Exhibit B-3.

That he would have further testified if permitted to answer that he appeared personally at the local board for a personal appearance on September 21, 1956; that he was [fol. 44] accompanied by Mr. Thomas King. That he called

the attention of the local board to his Selective Service file which he believed fully justified his receiving a 1-O classification. That following this personal appearance and within 24 hours thereafter, he prepared Government's Exhibit B-12 and therein he truly set forth in accordance with his best remembrance the substance of the conversations that took place with the draft board members.

That thereafter he was again classified as 1-A-O by the draft board and he filed his appeal with the Appeal Board (Government Exhibit B-10) and that he sent a letter written in his own handwriting to the Appeal Board (Government Exhibit B-17) in which letter he referred to a hearing before Mr. F. M. Brittingham, a hearing officer of the Department of Justice.

That with Government's Exhibit B-17, he attempted to refute the false and erroneous statements made by T. Oscar Smith of the United States Department of Justice in his letter (Government's Exhibit B-16).

He would have answered if permitted to do so that he refute[d] the statements made by Mr. Smith in Government's Exhibit B-16 as false and erroneous in the following respect:

That he did not tell the hearing officer that his opposition to military service is based largely upon the commandment "thou shall not kill", but to the contrary, that his opposition is based upon the command of the Lord, "Thou shalt love your enemies and to do good to them who do you evil." That he would have refuted as false and erroneous the statement made by T. Oscar Smith in Government's Exhibit B-16 and that he did not state to the hearing officer "although Community Industries does not manufacture munitions in the ordinary sense of the word, they do manufacture other items for military consumption such as tents, [fol. 45] Wac uniforms, candy for rations and some sort of valve used on naval vessels and other items." To the contrary, the Church of Jesus Christ never manufactured anything, that it never owned any manufacturing organization since it is a spiritual and not a business organization. That to the contrary he also stated that the Community Industries is owned by some members but this organization for which the defendant was working never manufactured

munitions in any sense of the word, and they only manufactured items for civilian consumption some of which may be used for military consumption as well, as for instance, candy, tents, and nurses uniforms.

Defendant would have further testified in refuting T. Oscar Smith's statement if permitted to answer the question, to the effect that he never knew that Community Industries ever manufactured any kind of valve used on naval vessels and other items, and to that extent, Mr. Smith's statement is false. He would have refuted Mr. Smith's statement because he never stated to the hearing officer or to anyone else that "It would not be considered immoral or a violation of their Christian duty to manufacture ammunition", and that Mr. Smith's statement is false to the effect that this defendant stated to the hearing officer or anyone else that the church members' "reluctance to manufacture munitions is not a matter of religious belief but merely a matter of preference."

The defendant would have further answered if permitted to do so, that he was in full agreement with the statement expressed by his Pastor, Miss Harshman, and he is particularly in agreement with her statement that church members "would not willingly engage in the production of any article used directly to cause death; that would be repugnant to our principles and mission in this [fol. 46] world." He would have answered that he would participate in the manufacture of any goods for civilian consumption even though the same may be used for military purposes also, but he would not participate in the manufacture of any material used for destructive purposes and that he would not participate in the manufacture of bullets, guns, machine guns, bombs, in a word, none of those things the purpose of which is to destroy life on this earth. That he would refuse to participate in the manufacture of such things because in accordance with his religious training and belief that would be contrary to his mission on this earth.

He would have further answered if permitted to do so that he reported for induction when ordered to do so, however, he did not take the step forward and that he failed to take the step forward not because he intended

to violate any laws of this land, but solely because by taking the step forward he would have violated his religious training and belief. He would have acted contrary to his conscience.

If permitted, he would have also answered that when he failed to take the step forward he was aware of the law known as 6 (j) of the Military Training and Service Act which provided that nothing in the law should be construed to require any person who was conscientiously opposed to participation in combatant and non-combatant service to be made to perform such service. That he was aware of the provisions of the law pertaining to alternative service in civilian work contributing to maintenance of the national health, safety or interest, and when he failed to take the step forward he was conscientiously opposed to both combatant and non-combatant service, and that he was willing to do civilian work as prescribed by the law. He believed that he had the right under the law to refuse to take the step forward and thus testing whether [fol. 47] in violation of the law, his draft board and the appeal board could order him to participate in non-combatant service contrary to his religious training and belief and contrary to his conscience.

(The Government objects to the offer of proof and the Court sustains the objection to the offer.)

(In the presence of the jury the following proceedings were had:)

Cross examination.

By Mr. Bittman:

I registered with Local Board 177 of Sullivan, Illinois, but I don't remember the exact date. Government Exhibit A has my signature. Government Exhibit B-2 is Selective Service Form 150 which I prepared and returned to the board. Subsequently, I was classified by the board as 1-A-O. I appealed my classification.

Either I or someone at my direction placed Government Exhibit No. 7 with the local board. The board never re-

fused to put any document in my file that I asked them to put in. Prior to the appeal board classification I appeared before a hearing officer of the Department of Justice. Government Exhibit B-17 is the letter that I prepared and sent to the appeal board in response to the Department of Justice's recommendation.

I received a classification of 1-A-O and I had a physical and I received an order for a physical. I reported for the physical and I was found physically acceptable for induction. I received (Government Exhibit B-26) an order to report for induction. I did report on the date of September 14, 1960.

I heard Mr. Schuttler testify about the conversations with me.

Mr. Schuttler asked us if we knew a certain party down in Sullivan, Illinois, which we did not and which question [fol. 48] he asked every selectee from down there and they didn't know either, and then he said something about not approving what we were doing but it was the law that he had to go ahead and ask us if we were going to refuse induction, and he read the law to us and said that if we stepped forward that meant that we were accepting induction. If we remained where we were, we were refusing. He did this twice and we remained where we were. He then asked us if we would sign the statement but we did not and he dismissed us.

I recall that Mr. Schuttler called both our names and I remained standing.

We arrived at the induction station in Chicago on September 14th about 9:00 o'clock, I guess, in the morning. We were at the station until about 3:30 in the afternoon. I would say it was between 1:00 and 2:00 or 2:30 that we had the conversation with Captain Schuttler and the ceremony took approximately 15 minutes.

Redirect examination.

By Mr. Schwartzman:

In the ceremony, Captain Schuttler was standing, we were standing about ten feet apart. Captain Schuttler was

in his uniform. Captain Schuttler made the statement to me, "Malcolm Lebert Parker, I am now going to give you a second opportunity to take the step forward." He said, "You are about to be inducted into the armed forces of the United States. You will take one step forward as your name is called, and that step forward constitutes your induction into the armed forces of the United States."

(The Government objects to the question that the witness tells of the conversation with Mr. Brittingham. Objection is sustained.)

[fol. 49] Witness continuing:

I wrote a letter pertaining to the recommendation of T. Oscar Smith of the Department of Justice that is Government Exhibit B-17.

(Government objects to the question whether the defendant stated in his letter that "The goods that we manufactured for use in the army or navy could be used by civilians too. The good that we manufacture is not directly involved in killing and fighting." The objection was sustained.)

(The Government objected to the question whether the defendant appeared at any time before the appeal board of Selective Service. The objection was sustained.)

VERNON ELDER, a witness on behalf of the defendant, testifies as follows:

Direct examination.

By Mr. Heisler:

My name is Vernon Elder. I reside in Sullivan, Illinois. I am in the law practice and I am now serving as County Judge of Moultrie County. Sullivan is the County seat. I was born in Sullivan and I always resided there.

(Government objects to the question as to the witness' acquaintanceship with members of the Harshmanite Church. The objection is sustained.)

Witness continuing:

I have known the defendant, Malcolm Lebert Parker for practically his entire life. I know his father personally. I know the reputation of the defendant for veracity, truthfulness, sincerity, honesty and integrity, and his reputation is good.

[fol. 50] Richard Russell Harshman was called as a witness on behalf of the defendant and testified as follows:

Direct examination.

By Mr. Heisler:

I resided in Sullivan, Illinois for 26 years. I am employed by Community Industries in the sales department of the Lucy Ellen Candy division. I am so employed for 8 years. I have known the defendant Parker all his life. We have grown up together. I know his reputation in the community. His reputation for truthfulness, sincerity, honesty and integrity is fine, it is good.

Thereafter the defense rests.

Walter Schuttler was called in rebuttal by the Government and testified as follows:

Direct examination.

By Mr. Bittman:

I testified before that when I was Deputy Commanding Officer at the induction station in Chicago, I had a conversation with the defendant Parker. This conversation was pursuant to army regulations. I have the army regulations with me. This is Government Exhibit D-1 and D-2. These are the induction procedures. They are in my care, custody and control.

(Government Exhibits D-1 and D-2 were admitted into evidence.)

Thereupon the Government rests.

(Proceedings outside the hearing of the jury:)

MOTION FOR JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

The defendant presents his motion for judgment of acquittal.

The motion of the defendant made at the close of the evidence for judgment of acquittal denied.

[fol. 51]

DISCUSSION ON INSTRUCTIONS

Discussion between Court and counsel as to the party's requested instructions.

The defendant objects to Government's proposed instructions 1, 8, 11, 19, 20, 24, 25, 26, 27, 30, 31, 32, 33, and 34.

Over the objections of the defendant, the Court grants Government Instructions 1 amended and 8, 11, 19, 20, 24, 26, 30, 31.

(The Government submits an amended Instruction 24 and withdraws the original 24, which amended 24 is approved by the Court over the objection of the defendant.)

The defendant then objects to Government instruction 22 as repetitious of amended 24.

(Government's instructions 22 and 24 are approved by the Court over the objection of the defendant.)

The defendant objects to Government instruction 25 and the same is withdrawn by the Government.

Government instruction 26 is approved by the Court over the objection of the defendant. Upon Defendant's objection to Government instruction 27 the same is withdrawn.

Over the objection of the defendant Government instruction 30 is given.

After the defendant objects to Government instruction 31 the same is amended and as amended is offered to which the defendant objects.

Said instruction is approved by the Court over the objection of the defendant.

The defendant objects to Government instruction 32 which is withdrawn by the Government.

The defendant objects to Government instruction 33.

Thereupon the Government withdraws the same.

[fol. 52] The defendant objects to Government instruction 34, whereupon the Government withdraws the same.

The Government withdraws its request for amended instruction 25 and amended instruction 27.

(The following proceedings were had in the presence of the jury:)

Closing argument on behalf of the Government by Mr. Bittman.

Closing argument on behalf of the defendant by Mr. Heisler.

Closing argument in reply on behalf of the Government by Mr. Bittman.

INSTRUCTIONS OF THE COURT TO THE JURY

Introductory remarks by the Court.

Instructions to be considered as a whole. (Government Instruction No. 1, no objection.)

Instructions binding on jury. (Government Instruction No. 2, no objection.)

Jury to determine the facts. (Government Instruction No. 2, no objection.)

Expression of opinion by the Court. (Government Instruction No. 2, no objection.)

Presumption of innocence. (Government Instruction No. 3, no objection.)

Burden of proof on Government. (Government Instruction No. 4, no objection.)

Guilty not be to inferred. (Government Instruction No. 3, no objection.)

Reasonable doubt. (Government Instruction No. 4, no objection.)

[fol. 53] Credibility of witnesses. (Government Instruction No. 9, no objection.)

Evidence stricken by the Court. (Government Instruction No. 5, no objection.)

"As you have been told, the indictment in this case charges that on or about September 14, 1960, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Malcolm Lebert Parker, being a male person, was required to and did register under provisions of the Universal Military Training & Service Act, and who duly became a registrant at Local Board 177, Sullivan, Illinois, and was duly classified in Class 1-A-O, and was ordered to report for induction by said local board, then and there unlawfully, wilfully, knowingly and feloniously did neglect, fail and refuse to perform the duty of submitting to induction as is required by law.

"The defendant, as you know, has pleaded not guilty to the indictment. The indictment charges a violation of a provision of the Universal Military Training & Service Act which reads in pertinent part as follows:

"'Any person who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in execution of this title, or rules and regulations or directions made pursuant to this title, shall, upon conviction in any District Court of the United States of competent jurisdiction, be punished—' And so forth." (Government Instructions 18 and 26, the latter objected to and given over the objections and exceptions of the defendant.)

"Selective Service registrants, ladies and gentlemen, classified in Class 1-A are available for military service. A registrant classified in Class 1-A-O means that he has been granted a conscientious objector classification; however, he is available for non-combatant military service only. [fol. 54] The classification 1-A-O is designed to embrace those who are found to be conscientiously opposed to taking life or active participation in mortal combat. Inductees of this class are not required to bear arms but serve in the Medical Corps and other service units." (Government Instructions No. 19 and 20 objected to and given over the objections and exceptions of the defendant.)

Final order of the draft board, if lawful, is binding. (Government Instruction No. 21, no objection.)

A legal order of induction is binding. (Government Instruction No. 22, no objection.)

The Court determines the legality of the order of induction. (Government Instruction No. 28, no objection.)

"The decision of the draft board concerning classification made in conformity with regulations is final, and the determination as to whether this decision was in conformity with the regulations is made exclusively by the Court. In this case the Court has decided that the draft board's determination of the 1-A-O classification was made in conformity with the regulations of the law." (Government Instruction No. 24 objected to and given over the objections and exceptions of the defendant.)

Jury to determine willful failure to submit to induction.

(Government Instruction No. 28, no objection.)

"The defendant was classified in Class 1-A-O by the Selective Service System, that is to say, his draft board, which is an agency of the Federal Government. Whether or not this classification was a legal one is exclusively for the determination of the trial court. I have gone over and reviewed the Selective Service file and I have found that there is a basis in fact for the 1-A-O classification; therefore, you are instructed that in your independent [fol. 55] review of the evidence, you are not authorized to determine whether or not this classification given to the defendant was a proper one because under the law this is not an issue which the jury is authorized to determine.

"The defendant, of course, has a right to a jury trial and he has had one; however, that constitutional right does not include the right to have you, the members of the jury, determine whether you agree with the classification which was given to the defendant by the draft board. Consequently, since the Court has determined that this 1-A-O classification is a legal one, that determination is conclusive." (Government Instruction No. 31, objected to and given over the objections and exceptions of the defendant.)

"It is the exclusive function of the Selective Service Board to classify registrants and to fix the time of their induction into the service. The defendant, as a registrant, neither has nor had he the right to determine for himself

whether he should be given any particular classification." (Government Instruction No. 30 objected to and given over the objections and exceptions of the defendant.)

Objections made during the trial ought not to influence the jury. (Government Instruction No. 6, no objection.)

"You, ladies and gentlemen of the jury, are the sole judges of the credibility of the witnesses and the weight which is to be given to the testimony of the witnesses who appeared here on the witness stand. In weighing the testimony of each witness, you should carefully scrutinize it, consider all the circumstances under which the witness testified, his demeanor on the stand, the relation which he bears to the Government or to the defendant, the manner in which he might be affected by the verdict, the extent to which the witness is corroborated or contradicted by other [fol. 56] credible evidence, and, in short, any circumstances that tend to throw light upon his credibility; and, applying these tests which I just stated, it is for you to determine the weight which is to be given to the testimony of each witness." (Government Instruction No. 8 objected to and given over the objections and exceptions of the defendant.)

Credibility of witnesses. (Government Instruction No. 9, no objection.)

Contradictory testimony. (Government Instruction No. 10, no objection.)

"The defendant, Mr. Parker, has testified from that witness stand and you have heard his testimony. The fact that he is the defendant does not mean that he cannot tell the truth. You should weigh his testimony as a defendant by the same rules which you should weigh the testimony of any other witness, but you should keep in mind that he is the defendant in this case, and, of course, has a vital interest in the outcome of the trial." (Government Instruction 11, objected to and given over the objections and exceptions of the defendant.)

Good reputation of defendant. (Government Instruction No. 12, no objection.)

Evidence to be examined in the light of common experience. (Government Instruction No. 13, no objection.)

Exclusive of sympathy, passion and prejudice. (Government Instruction No. 14, no objection.)

Colloquy between Court and counsel should not be considered by jury. (Government Instruction No. 15, no objection.)

To convict, there must be found evil intent. (Government Instruction No. 17, no objection.)

[fol. 57] Counsel's statement is no evidence. (Government Instruction No. 16, no objection.)

Jury not to consider punishment. (Government Instruction No. 29, no objection.)

Form of verdict and general instruction to the jury.

DEFENDANT'S REJECTED INSTRUCTIONS

"The court further instructs you that one with innocent motives, who honestly believes an order to be unconstitutional or unlawful and, therefore, not obligatory, may well refuse to obey the order until a Court shall have held it valid. If you find from the evidence that defendant Parker believed the induction order given to him to be invalid had the right to resist its command until the Court declared it to be valid. The testing of the validity of the induction order herein and of itself is no crime and if you find that the intent of Parker was to so test the order and you further find that his intent was not to violate a valid law, you must find him not guilty." (Or 67—Defendant's instruction "Y" objected to by Government and objection sustained.)

"At all times pertinent to this matter there was in full force and effect a section of the Selective Service law enacted by The Congress of the United States which reads as follows:

'Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and ser-

vice because of such conscientious objections whose claim [fol. 58] is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regula- [fol. 59] tions as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title,

to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record of appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors." (Or 73-74—Defendant's Instruction "G" objected to by Government and the objection sustained.)

"Failure of the United States Government or of a defendant to produce available evidence which would help decide the issue may raise an inference that the evidence would be unfavorable to the party to whom it is available." (Or 75—Defendant's Instruction "W" objected to by Government and the objection sustained.)

"In deciding this case the Court instructs you that you are not to be concerned in the slightest with the question whether you agree or disagree with the religious position taken by the defendant. The Congress of the United States has provided that those persons who, because of religious [fol. 60] training and belief, are opposed to military training are to be treated differently than those who believe otherwise. That is as much a part of the law of our country as any other law." (Or 77—Defendant's Instruction I objected to by the Government and objection sustained.)

"I instruct you that the defendant in asserting his claim for classification as 1-O was not claiming that he was free from all type of service to his country; he was claiming that, because of religious training and belief, he had a right to render what is known as alternative service to his country instead of combatant or non-combatant military service. Alternative service under the law consists of performing for a period of 24 consecutive months civilian work contributing to the maintenance of the national health, safety or interest." (Or 78—Defendant's Instruction U objected to by Government and objection sustained.)

"The Act of Congress and the applicable Selective Service Regulation governing the handling of appeals of persons claiming 1-O classification provide a method of procedure by which the Appeal Board, before deciding the merits of the claim, shall obtain from the Department of Justice its recommendation on the matter. This is done through the medium of a Hearing Officer who holds a hearing and conducts an inquiry as to the character and good faith of the objection of the person involved. This function of the Department of Justice, acting through a Hearing Officer, is an important and delicate responsibility. In performing that function the Department, acting through the Hearing Officer, must adhere to standards of procedure which will enable it to discharge its duty to forward sound and unbiased advice to the Appeal Board for its consideration in deciding the merits of the case." (Or 79—Defendant's Instruction "K" objected to by Government and objection sustained.)

[fol. 61] "You must determine the selective service boards fully and fairly complied with the applicable regulations as promulgated by the President. Such regulations limit and define the jurisdiction of the boards, and consequently, if there has not been a full and fair compliance with such regulations the order to report for induction would be unlawful." (Or 80—Defendant's Instruction "L" objected to by Government and objection sustained.)

"You will be required to determine whether the defendant was denied any rights afforded by the selective service regulations or whether the defendant was deprived of any rights by the failure of the boards to give full and fair consideration to the applicable regulations or if they acted arbitrarily or capriciously or a result of bias and prejudice in classifying the defendants." (Or 81—Defendant's Instruction "M" objected to by Government and objection sustained.)

"The act of Congress and the Selective Service Regulations limit and define the jurisdiction of Selective Service Boards and action of such boards contrary to or not in full and fair compliance therewith or made arbitrarily, capriciously, or as a result of prejudice would be lawless and beyond the Boards' jurisdiction.

"The Court therefore instructs you that if you find that the Selective Service Boards' action in denying defendant's claim for 1-O classification and in placing him in 1-A-O classification was the result of bias, caprice, and arbitrary conduct on the part of such boards, or if such were done without fully and fairly complying with the Selective Service Regulations, your verdict should be Not Guilty." (Or 82—Defendant's Instruction "N" objected to by Government and objection sustained.)

[fol. 62] "If you find from all the evidence that the selective service boards denied defendant the right to make full proof before them either orally or in writing of his claim for exemption, or that they refused to give the defendant's claim full and fair consideration, or that the decisions of the boards were based upon or were the result of prejudice, bias, discrimination or unfair procedure, then I instruct you that such action would be lawless and beyond the jurisdiction of such boards and you should return a verdict of not guilty." (Or 83—Defendant's Instruction "O" objected to by Government and objection sustained.)

"It is the law that the failure of the Selective Service Appeal Board to accord a registrant the procedural rights provided by the Acts of Congress and the Selective Service Regulations makes void an order to report for induction and constitutes a valid defense to a criminal charge of refusing to be inducted into the service." (Or 84—Defendant's Instruction "P" objected to by Government and objection sustained.)

"If the evidence in this case shows that the Selective Service authorities acted arbitrarily or capriciously in rejecting the defendant's claim for 1-O classification and in classifying him as 1-A-O then the Court instructs you that your verdict in this case should be Not Guilty." (Or 85—Defendant's Instruction "Q" objected to by Government and objection sustained.)

"If you find from the evidence in this case that the Appeal Board in rejecting defendant's claim for classification as 1-O and in classifying him as 1-A-O acted arbitrarily or capriciously or failed to follow the procedure provided for by the Act of Congress or the Selective Service Regulations, your verdict should be Not Guilty." (Or 86—Defen-

tion in trying to be kind to him. But evidently neither he nor you thought I was kind.

MR. HEISLER: No, your Honor, I am not asking for kindness. I am asking the Court to—make use of the rule that is provided for such cases.

The Court: I think that is the proper sentence in this case.

. . . My disposition is a case like this where the guilt in my opinion is so clearly established, I might say when you speak of the criminal rules, I could avail myself of the rule which provides that no bail be granted. But I make it $5,000.00.

. . . He will be remanded to the custody of the United States Marshal. When he makes bail, he will be released.

Certificate of Court Reporter.

[fol. 66]

UNITED STATES DISTRICT COURT

(Caption—No. 61 CR 49)

JUDGMENT AND COMMITMENT—September 26, 1961

On this 26th day of September, 1961 came the attorney for the government and the defendant appeared in person and

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Section 12, Universal Military Training and Service Act, Section 462, Title 50 App. U.S.C. (Failure to submit to induction into the United States service)

and thereupon the defendant by his counsel moves orally for a new trial and the Court being fully advised it is Ordered that said motion be and the same is hereby denied

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] Two (2) Years and besides that he forfeit and pay to the United States of America a fine in the sum of One Thousand Dollars ($1,000.00) and the costs of prosecution to be taxed and that he stand committed until the fine and costs are paid or until he shall be otherwise discharged by due process of law

[fol. 67] It Is Ordered that bail be fixed in the sum of Five Thousand Dollars ($5,000.00) pending appeal

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Julius J. Hoffman, United States District Judge.

The Court recommends commitment to:[6]

September 26, 1961

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutivel, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court wishing to recommend a particular institution.

In the United States District Court

(Caption—Criminal No. 61 CR 49)

Notice of Appeal—Filed October 3, 1961

Name and Address of Appellant:
Malcolm Lebert Parker
Sullivan, Illinois

[fol. 68] Names and Address of Appellant's Attorneys:
Francis Heisler and Rotenberg, Schwartzman & Richards
By: Mark Lee Schwartzman
Suite 1730
7 South Dearborn Street
First Federal Building
Chicago 3, Illinois

Offense:
Violation of Section 462, Title 50, App. U. S. Code. (Section 12, Universal Military Training and Service Act)

Concise Statement of Judgment or Order Giving Date and Any Sentence:
The judgment of the Court of the 26th day of September, 1961, on the verdict of the jury, is that the defendant is guilty, and that he be sentenced into the custody of the Attorney General of the United States for the period of two years with a fine of $1,000.00 plus costs.

The above-named appellant hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Mark Lee Schwartzman, Francis Heisler and Rotenberg, Schwartzman & Richards, By: Mark Lee Schwartzman, Attorneys for Appellant.

Suite 1730
7 South Dearborn Street
Chicago 3, Illinois
RAndolph 6-1678

Dated: Chicago, Illinois
October 3, 1961

12 Certificate of Mailing.

13 • • •

[fol. 69] Stipulation and Orders Extending Time to Print and File Record on Appeal (omitted in printing).

[fol. 70] Clerk's Certificate (omitted in printing).

[fol. 71]

In the United States Court of Appeals

For the Seventh Circuit

No. 13585

September Term, 1961—April Session, 1962

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

United States of America, Plaintiff-Appellee,

v.

Malcolm Lebert Parker, Defendant-Appellant.

Opinion—August 20, 1962

Before Schnackenberg, Knoch, and Kiley, Circuit Judges.

Kiley, Circuit Judge. This is an appeal from the judgment on verdict of a jury, convicting defendant of violation of § 12 of the Universal Military Training and Service Act[1] by his refusal to submit to induction into military service. He was sentenced to the custody of the Attorney General for two years, and was fined $1,000.00.

The defendant Parker, a member of the Harshmanite religious sect,[2] registered for the draft before Local Board 177 in Sullivan, Illinois, May 9, 1955. He was classified 1-A-O[3] and subsequently that classification was confirmed

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[1] 50 U.S.C.A. App. § 462.

[2] The Church of Jesus Christ, Sullivan, Illinois.

[3] This classification covers those who are opposed to combatant service but inductible in a noncombatant capacity.

by the Board after a hearing upon Parker's objection to the classification on the ground of his "religious belief." On Parker's appeal to the Illinois State Appeal Board, the [fol. 72] Department of Justice, by virtue of § 6(j)[4] of the Act, made an inquiry into the case, and granted a hearing upon his claim to an exemption as a conscientious objector under classification 1-O.[5] He and four witnesses appeared before the hearing officer who found Parker had not sustained his claim and recommended the 1-A-O classification. The Department of Justice concluded that Parker had established his conscientious objection to combatant military service but not with respect to non-combatant service. The Department recommended to the Appeal Board that he be classified 1-A-O.

Parker submitted his reasons in writing to the Appeal Board for not accepting the classification. The Board by unanimous vote again classified him 1-A-O. He was then examined physically and found acceptable for service. The Local Board thereafter "reopened and considered anew" the classification and retained him in 1-A-O. No further steps were taken by Parker for another personal appearance or appeal. He was ordered by the Board to report for induction. He reported, but refused to submit to induction. His indictment, trial, and conviction followed.

We see no merit in Parker's contention that there was no basis in fact to support the court's decision not to interfere with his classification.

The Act makes no provision for the customary scope of judicial review; courts are not to weigh the evidence to determine whether the classification was justified; if in conformity with regulations, the Board decisions are final, even if erroneous; and the question of jurisdiction is reached only if there is no basis in fact. *Estep* v. *United States*, 327 U. S. 114 (1946).

The District Court's function was to ascertain "whether there was a basis in fact for the classification," *United*

---

[4] U.S.C.A. App. § 456(j) (1961 Supp.).

[5] This classification covers those individuals conscientiously opposed to participation in the armed forces in either a combatant or noncombatant capacity.

States v. *Van Hook*, 7 Cir., 284 F. 2d 489, 494, reversed and remanded for resentencing, 365 U. S. 609 (1961). The court was confined to a review of Parker's file in deciding whether a basis in fact existed. *United States* v. *Mohammed*, 7 Cir., 288 F. 2d 236, 238, cert. denied, 368 U. S. 820 (1961). It was not to look for substantial evidence to support the [fol. 73] determination of the Local or Appeal Board. *Witmer* v. *United States*, 348 U. S. 375, 381 (1955).

In his classification questionnaire Parker claimed a status of conscientious objector to participation in war in any form. He requested, filled out and returned to the Local Board the special S.S.S.[6] form reiterating his claim "by reason of my religious training and belief;" stating his belief in a Supreme Being; his membership in the Church of Jesus Christ in which he was raised and whose teachings he accepted; and in a typewritten statement expanded on his belief and its basis in the Bible.

The Department of Justice hearing officer on Parker's appeal to the Appeal Board found that Parker worked for Community Industries, a Harshmanite enterprise, which produced WAC uniforms, candy for army rations, valves used on naval vessels, and other items usable in war; that Parker did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite "reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference;" and that Parker subscribed to the beliefs and opinions of the Harshmanites.

Because we have concluded the District Court did not err in deciding there was a basis in fact for the classification, it follows that the induction order was not void. And it also follows that the District Court did not err in denying Parker's motion for acquittal at the close of the Government's case, for want of a basis in fact.

Parker relies on *United States* v. *Dickinson*, 346 U. S. 389 (1953) to set aside the classification. The Appeal Board's decision on the basis of a registrant's file, giving "consideration" to the recommendation of the Department of Justice, is usually the final determination of the Selective Service System. *Witmer* v. *United States*, 348 U. S. 375,

[6] The Selective Service System, herein referred to as the S.S.S.

377 (1955). In that case, the court interpreted *Dickinson* to hold that there was no basis in fact for the classification because there was no evidence, "incompatible with" Dickinson's proof, to rebut his prima facie case, made out by objective facts. That distinguished Witmer's case from Dickinson's, and distinguishes Parker's. In *Witmer* and here, the question cannot be determined on objective facts such as Dickinson's, which involved a ministerial status. Once Dickinson's status was determined prima facie, the [fol. 74] Government was required to produce a basis in fact on which the court could decide his claims were not as stated. In Parker's case the question is whether there is affirmative evidence produced by the Government that he has not "painted a complete or accurate picture." *Witmer* v. *United States*, 348 U. S. 375, 382 (1955). "When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption" courts may not inquire further as to the correctness of the board's order. *United States* v. *Simmons*, 7 Cir., 213 F. 2d 901, 904 (1954), reversed, other grounds, 348 U. S. 397 (1955).

Parker also relies upon *Batterton* v. *United States*, 8 Cir., 260 F. 2d 233 (1958), which is not in his favor on the facts before us. And each case must "of necessity be based on the particular beliefs of the individual." *Sicurella* v. *United States*, 348 U. S. 385, 390 (1955). The court there said the record "does not even by indirection," deny Sicurella's sincere religious beliefs. Parker argues the record here as to him is like that record as to Sicurella. But Sicurella's sincerity was admitted and the court said "we are therefore relieved of the task of searching the record for basis in fact to support a finding of insincerity." p. 388.

We see no inconsistentcy in the Department of Justice and the Board recognizing Parker's sincerity of religious belief and the classification based on the admitted fact of his willingness to participate in the production of war goods. The Department of Justice recommendation discloses Parker's view that "it would not be considered immoral or a violation of their Christian duty to manufacture ammunitions * * *." This fact would suffice to rebut Parker's prima facie showing. We do not read the language of *Witmer* v. *United States*, 348 U. S. 375 (1955)

that "there must be some inference of insincerity or bad faith" to mean that there must be evidence that registrant is a hypocrite or liar. The Board was not required to classify Parker 1-O merely because he stated he was opposed "to participation in war in any form." His testimony taken as true disclosed that he did participate in aiding the war effort. There is a distinction between a conviction based on a sincere religious belief and a conviction based on an erroneous inference about what participating in a war means. In *United States* v. *Wilson*, 7 Cir., 215 F. 2d 443 (1954), the nature of Wilson's employment was not incompatible with his prima facie proof of 1-O classification and the file contained no affirmative evidence [fol. 75] to support the National Board's 1-A classification. That case does not aid Parker.

Parker's file does not show that he was given notice of the time and place of hearing by the Department of Justice examiner or sent a copy of the Department recommendation to the Appeal Board, to which he was entitled to file a written reply. He contends there was not full compliance therefore with the Selective Service regulations. The Department of Justice letter to the Board discloses a hearing was had and the file contains Parker's letter or "reply" to the Appeal Board. There is no substance to this contention. And we are not to determine the truth or falsity of the evidentiary basis of the Department of Justice recommendation unless the irregularities affected the Appeal Board's review. *United States* v. *Moore*, 217 F. 2d 428, reversed on other grounds, 348 U. S. 966 (1955).

The Local Board clerk testified that the Board "felt they were doing their best to acknowledge the registrant's religion * * *" and thus, according to Parker, showed that emotion rather than the law permeated the Local Board proceeding. The only relevant issue before us in this case is the classification of the Appeal Board in its independent, de novo proceeding. This proceeding superseded the Local Board's hearing because there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board. *United States* v. *Van Hook*, 7 Cir., 284 F. 2d 489, reversed and remanded for resentencing, 365 U. S. 609 (1961). Nor is there merit in the contention

that the recommendation of the Department of Justice stating that the courts consistently uphold 1-A-O classification where there was a willingness to do work supporting the war effort unduly influenced the Appeal Board and denied him due process. Since there is affirmative evidence to support the classification, we presume in the absence of further showing that the Appeal Board did not fail in its duty to respect Parker's rights.

There was no error in the District Court's ruling which precluded production of the Department of Justice hearing officer's report; and no error in denying the motion for acquittal on this ground. Neither the Act nor the regulation, since 1952, requires the report placed in the file, *Gonzales v. United States*, 364 U. S. 59 (1960).

The only relevant questions at the trial were whether there was a basis in fact for the classification; and if so, [fol. 76] whether Parker refused to submit to induction. The first question was for the judge, not the jury, upon the S.S.S. file. *Cox* v. *United States*, 332 U. S. 442 (1947), rehearing denied, 333 U. S. 830 (1948). The trial court properly refused to permit cross-examination of witnesses before the jury, on the S.S.S. file; and, properly sustained objections to testimony and rejected offer of proof on testimony bearing on the classification by the Local Board.

The only question for the jury in this case was whether Parker refused to submit. The court erred in permitting the S.S.S. file to go to the jury, for, as the court in *Cox* said, "* * * nothing in the file is pertinent to any issue proper for jury consideration." But we see no prejudice from this fact since the jury had already heard oral testimony of the substance of its contents. The court properly precluded testimony that Parker's intention in refusing to "step forward" was merely to test the Draft Board's right to order his induction.

The court refused to give Parker's proffered instruction setting forth § 6(j) of the Act. This was not error. The question of exemption from service was not for the jury. Nor was there error in the refusal to give an instruction on bias and prejudice, because there was no evidence from which an inference could be drawn that bias or prejudice influenced the Appeal Board's classification. We have read

the other refused instructions, and arguments for them in the transcript, and see no error in the rulings. The court should not have instructed the jury on its "independent review of the evidence" nor on credibility of witnesses in this case. But these errors were not prejudicial.

The judgment is Affirmed.

[fol. 77]

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13585

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

MALCOLM LEBERT PARKER, Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—August 20, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

[fol. 78]

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

ORDER DENYING PETITION FOR REHEARING —September 14, 1962

It Is Ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

[fol. 79] Clerk's Certificate. (omitted in printing).

[fol. 80]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 17, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT, U. S.

SUPPLEMENTAL TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 516

MALCOLM LEBERT PARKER, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1942
CERTIORARI GRANTED DECEMBER 14, 1942

Supreme Court of the United States

OCTOBER TERM, 1962

No. 516

MALCOLM LEBERT PARKER, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 67A]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13585

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

MALCOLM LEBERT PARKER, DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Honorable Julius J. Hoffman, District Judge

Selective Service System

COVER SHEET

Date of registration 9 May 1955

Date of mailing Questionnaire 16 May 1955

CLASSIFICATION

DATE	CLASS	DATE OF EXPIRATION
OCT 24 1952	1-O	
SEP 24 1956	4-D	
12/9/57	1-A-O	
MAY 1960	4-A	4 April 61

GOVT'S EXHIBIT No.

I certify that this is a true photostatic copy of the Selective Service file of Malcolm Lebert Parker, 11-177-37-3

F. B. WOODWORTH
Lt. Colonel, USAF
Deputy State Director
Selective Service System
19 May 1961

GOVT'S EXHIBIT No.

GOVT'S EXHIBIT B, No.

[fol. 69] GOVT'S' EXHIBIT B, No. 1

LOCAL BOARD NO. 177
Selective Service System
MAY 25 1956
County Court House
Sullivan, Illinois

Form approved
Budget Bureau No. 33-R102.8

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

[fol. 70]

Statements in This Questionnaire Are Confidential as Prescribed in the Selective Service Regulations

Fill Out This Form on TYPEWRITER or Print in Ink

STATEMENTS OF THE REGISTRANT

Series I—IDENTIFICATION

INSTRUCTIONS: You are required to complete all entries in this series. Please print.

First Name	Middle Name	Last Name
MARY A.	LEWIS	PAGE

(Other Names Used)

NONE

(Permanent Address)

Number and street or R. F. D. route	(City, town, or village)	(Zone)	(County)	(State)
514 South Main Street	SULLIVAN		MOULTRIE	ILL. No. 5

Draft Board No. (If none, enter "None")	Social Security No. (If none, enter "None")
5237	361-28-1114

Series II—PRESENT MEMBER OF ARMED FORCES, OR RESERVE COMPONENT, OR OFFICER TRAINING PROGRAM

INSTRUCTIONS.—(1) You are required to complete the first part of this series if you are on active duty in the Armed Forces of the United States, the Coast Guard, a cadet or midshipman at an Armed Force academy, a commissioned officer of the Public Health Service or the Coast and Geodetic Survey on active duty, or a midshipman, Merchant Marine Academy. This information will be verified by the branch of service concerned. If none, enter "None".

Branch of Service (Organization)	Service No.	Date of Entry

INSTRUCTIONS.—(2) You are required to complete the second part of this series if you are a member of the federally recognized National Guard or Air National Guard, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve; or if you have been selected for enrollment or continuance in the senior division, Reserve Officer Training Corps, or the Air Reserve Officer Training Corps or the Navy Reserve Officer Training Corps, or the Naval and Marine Corps officer candidate training program or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps or the officer procurement programs of the Coast Guard and Coast Guard Reserve, or appointed an ensign, United States Naval Reserve, while undergoing professional training; or if you are a fully qualified and accepted aviation cadet applicant. If none, enter "None."

Branch of Service (Army, Navy, Air Force, etc.)	Reserve Component or Program (Show organized unit, category, or unit, National Guard, aviation cadet applicant, ROTC, AROTC, NROTC, etc.)	Service Number (If applicable)	Date of Latest Entry or Date of Selection, Appointment, or Acceptance

Series III—PRIOR MILITARY SERVICE

INSTRUCTIONS.—You are required to complete the items in this series if you have been on active duty as a member of the Armed Forces of the United States, the Coast Guard, the Public Health Service, the Coast and Geodetic Survey or the armed forces of a foreign country. (Use a separate line for each term of service, listing last service first.) If none, enter "None."

1. Branch of Armed Forces or Country	Date of Entry Into Active Service (Month, Day, Year)	Service Number	Date of Separation From Active Service (Month, Day, Year)	Type of Separation (Honorable, General, Dishonorable)

2. Does service shown in Item 1 above include any time spent in the Army Specialized Training Program or any similar program conducted by the Navy, or as a cadet or midshipman in one of the armed service academies or in the Merchant Marine Academy, or on active duty for training only? Yes ☐, No ☐.

3. If your answer to Item 2 above is "Yes" give the name of the program or academy _____ date of entry _____ (Month) (Day) (Year) and date of release _____ (Month) (Day) (Year) from such Service.

Series IV—OFFICIALS DEFERRED BY LAW

1. I am at present the Governor of a State, Territory, or possession, a public official chosen by the voters of an entire State, Territory, or possession, a member of the legislative body of the United States or of a State, Territory, or possession, a judge of a court of record of the United States, or of a State, Territory, or possession or the District of Columbia; my office is _____ (If none, enter "None")

2. My term of office expires _____ (Date)

16-68765-6

[fol. 72]

Series VIII PRESENT OCCUPATION

1. You are required to check each of the following boxes appropriate to your case, to complete all other required entries in this series, and to furnish such added information as required by the local board.

(a) I am now working on a farm, orchard, or ranch. ☐ | If this box is checked, complete Series IX.

(b) I am now working in a nonagricultural occupation. ☒ | If this box is checked, complete this series.

(c) I am now a full time student. ☐ | If this box is checked, complete Series XI.

(d) I am now an apprentice. ☐ | If this box is checked, complete this series.

(e) I now have no employment nor am I a full time student ☐ | If this box is checked, complete Items 7 and 8 of this series.

2. The job I am now working at is (give full title, for example: construction draftsman, turret lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage license clerk, etc.):

Mechanic

3. I do the following kind of work in my present job. (Be specific. Give a brief statement of your duties.):

Ready meters for production line

4. In my present occupation, I am (Check one box only)—

(a) A regular or permanent paid employee, working for salary, wages, commission, or other compensation ☒. I have worked 2 years in my present occupation, and I do (do, do not) expect to continue indefinitely in it.

(b) A temporary or occasional employee ☐; I expect that my present job will end about ..... (Date)

(c) An apprentice under a written or oral agreement with my employer, which expires ..... (Date) ☐.

(d) An independent worker, working on my own account, not hired by anyone, and not hiring any help ☐.

(e) Working for my father or for the head of my family, but receiving no pay ☐.

(f) An employer or proprietor hiring ..... (Number) paid workers ☐.

5. My employer is Community Industries (Name of organization or proprietor, not foreman or supervisor; enter "Self" if self employed)

811 South Hamilton (Address of place of employment: Street, or R. F. D. Route, City, and State)

whose business is manufacturing garden tractors (Nature of business, service rendered, or chief product)

6. In my present occupation (complete all items)—

(a) I was employed by present employer on May 28, 1954 (Date)

(b) I entered job described in Items 2 and 3, this series, on Sept 1, 1954 (Date)

(c) I am paid at the rate of $ ..... per hour ☐, day ☒, week ☐, month ☐. (Check appropriate box)

(d) I work an average of 40 hours per week.

7. Other business or work in which I am now engaged is None (Nature of business (if none, enter "None"))

8. Prior work experience None

NOTE.—You may attach to this page a statement giving additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification.

16 84760-8

[fol. 75]

Series XV.—CONSCIENTIOUS OBJECTION TO PARTICIPATION IN WAR IN ANY FORM

INSTRUCTIONS.—You should complete this series by signing the statement below, requesting a Special Form for Conscientious Objector (SSS Form No. 150), from the local board, if, by reason of religious training and belief you are conscientiously opposed to participation in war in any form.

BY REASON OF RELIGIOUS TRAINING AND BELIEF I AM CONSCIENTIOUSLY OPPOSED TO PARTICIPATION IN WAR IN ANY FORM AND FOR THIS REASON HEREBY REQUEST THAT THE LOCAL BOARD FURNISH ME A SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR (SSS FORM NO. 150) WHICH I AM TO COMPLETE AND RETURN TO THE LOCAL BOARD FOR ITS CONSIDERATION.

Malcolm Lee Bert Parker
(Signature)

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS.—You may, at your option, complete this statement and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine your classification on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class 1-O

You may attach to this page any additional statement which you believe should be brought to the attention of the local board in determining your classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. You are required to make the registrant's certificate. 2. If you cannot read, the questions and your answers thereto shall be read to you by the person who assists you in completing this questionnaire. 3. If you are unable to sign your name you shall make your mark in the space provided for your signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended.)

I, Malcolm Lee Bert Parker certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are (are, are not) in my own handwriting.

Registrant sign here Malcolm Lee Bert Parker
Malcolm Lee Bert Parker
(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

Date

If another person has assisted you in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because
(For example—registrant unable to read and write English, etc.)

Date

(Signature of person who has assisted)

[fol. 76]

(Registrants Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote Yes	No
OCT 3 1956	1A0 JW McL Ltr. H.L.B. ltr. from 50.		
OCT 25 1956	SSS FORM NO. 110 MAILED Notice of Induction		
NOV 8 1956	Request for Personal Appearance. (Registered letter No: 609401)		
NOV 4 1956	Mailed letter of acknowledgement for Personal Appearance.		
SEP 18 1956	Mailed letter to [illegible] for personal appearance on 9-21-56		
	Registrant appeared on this date for personal appearance.		
SEP 21 1956	1A0 (WM) Ltr. H.L.B. mail		
SEP 26 1956	SSS FORM NO 110 MAILED Notice of Classification.		
OCT 1956	Request for State Appeal		
OCT 5 1956	Mailed PM-1417, Notice of Action on Request for Appeal. Re: received & allowed		
OCT 10 1956	PM- 1417 Mailed, Notice of Action on Request for Appeal. Re: date of file sent to Appeal Board		
OCT 10 1956	Mailed cover-sheet and file to Appeal Board Eastern Federal Judicial District.		
FEB 15 1957	Advisory recommendation requested by the appeal board from Department of Justice as to whether or not the registrant is entitled to be sustained in his claim that he is a conscientious objector, in accordance with Section 1626.25(a) Selective Service Regulations.		
12-18-57	Complete File and cover sheet returned from appeal board.		
12-18-57	Classified 1-A-O by appeal board. SSS Form No. 110 mailed.	3	0
DEC 4 1958	[illegible]		
NOV 10 1959	ILL SSS FORM 12-R MAILED		
DEC 17 1959	SSS FORM NO 223 MAILED (Order to Report for A.F. Physical Examination)		
1/21/60	Original & 3 copies DD Form 47 forwarded to a.f. examining station, Chicago, Ill.		
2/16/60	DD Form 62 (copy) mailed to registrant.		
MAY 11 1960	Registrant [illegible] A.F.E.S. Chicago, Ill.	3	0
MAY 12 1960	SSS FORM NO 110 MAILED		
6/2/60	Cover Sheet & Contents forwarded to Col. Woodworth for review.		
6/9/60	Cover Sheet & Contents received from Col. Woodworth.		
JUN 27 1960	SSS FORM NO. 127 MAILED		
	SSS Form 252 (Order to Report for Induction) mailed.		
8/11/60	PM-168 (Personal Message to Every Selectee) mailed.		

(8)

[fol. 77]

SELECTIVE SERVICE SYSTEM CLASSIFICATION QUESTIONNAIRE
MINUTES OF ACTION CONTINUED

SELECTIVE SERVICE NO.
11 177 37 39

PARKER, Malcolm Lebert

Date	Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President	Vote: Yes	No
9/8/60	Orig. & 3 copies DD Form 47 dated Jan. 27, 1960; Orig. & 3 copies DD Form 47 (Med.); Orig. & 3 copies SF 88; Orig. of SF 89; Orig. of CGHNS-46 dated 1/27/60; Orig. of x-ray all dated 1/27/60 forwarded to Armed Forces Induction Station, pursuant to St. Memorandum 1-60. Original of DD Form 62 and DD Form 47 also forwarded this date.		
	All papers received back from induction station with letter stating registrant 4/20/61 refused to submit to induction.		
4/29/61	Cover sheet & contents fwd'd to Col. Woodworth, Ill. St. Hdq. for review & determination pursuant to L-M No. 14, paragraph 9.		
10/18/60	Original & 1 copy of SSS Form No. 301 (Delinquent Registrant Report) mailed to Hon. Clifford M. Raemer, U. S. Attorney, E. St. Louis, Ill.		
10/18/60	Cover Sheet & Contents; Registration Card (SSS#1) forwarded to Col. Woodworth, Ill. St. Hdq., for transmittal to U. S. Attorney.		

SSS Form No. [illegible] (9)

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[fol. 78] GOVT'S. EXHIBIT B, No. 2

Govt's Exhibit B, No 2

LOCAL BOARD NO. 177
Selective Service System
26 1955
County Court House
Sullivan, Illinois

SELECTIVE SERVICE SYSTEM

Form approved
Bureau of the Budget No. 33-R-1142.

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. 11 177 37 39

Date of mailing 16 May 1955
Date received back at local board

LOCAL BOARD NO. 177
SELECTIVE SERVICE SYSTEM
COUNTY COURT HOUSE
SULLIVAN, ILLINOIS
(Local Board No. and Area)

Name PARKER Malcolm Lebert
(Last) (First) (Middle)

Address 804 So. Main St.
(Number of street, rural route or post office)

Sullivan Moultrie Co. Illinois
(City or town) (County) (State)

This form must be returned on or before 26 May 1955 (Return with Questionaire)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector, *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I. CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

Malcolm Lebert Parker
(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ☒ No ☐

2. Describe the nature of your belief which is the basis of your claim made in Series I above. State whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human rela-

SSS Form No. 150 (Revised 1-23-52) This revision supersedes all previous issues. (1)

78.

[fol. 79]

3. Explain how you became a member of the Communist Party, stating the circumstances under which you joined and which is the basis of your membership.

I was [illegible] JAMES [illegible] CANTON ST.
AND FROM [illegible] MEMBER

4. Give the name and present address of the person who first introduced you to the Communist Party.

LEON HORSHMAN
SOUTH HAMILTON, [illegible]

5. State what circumstances if any [illegible] the Communist Party.

I believe in making force [illegible] and
will help in it

6. Describe the activities and [illegible] which indicate the sincerity and depth of your religious convictions.

I do not believe in [illegible] or voting for candidates or taking part in anything that has to do with politics.
I don't believe in lodges filled with unbelievers
I try to do good to my enemies

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Item 1 above? If so, specify when and where.

None except in public services of our church

Section III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance, and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates of Attendance From	To
Lowe School	Public School	Sullivan, Ill	1948	1952
Bowman School	Junior High	Graham	1949	1951
Sullivan Schools	High School	Sullivan, Ill.	1952	1955
			19	19

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below, with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Dates Worked From	To
Store Clerk	Community Industries	Sullivan, Ill	1952	1954
Garage Mechanic	Community Industries	Sullivan, Ill	1954	1955
			19	19
			19	19
			19	19
			19	19

11

[fol. 80]

4. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence From	Dates of Residence To
Sullivan	Ill.	S. of Main	19 37	19 53
Sullivan	Ill.	S. of Main	19 52	19 55
			19	19
			19	19
			19	19
			19	19

5. Give the name and address of your parents and indicate whether they are living or not.
Mother, Opal Father they are living

6. (a) Are you a member of the Church of Jesus Christ of Latter-day Saints? (b) State the reason for your claim. Church of Jesus Christ on Hamilton
Church of Jesus Christ on Hamilton

Series IV — PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS — Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and [illegible] reason for becoming a member.

No

2. Are you a member of a religious sect or organization? Yes If your answer to question [illegible] answer questions (a) through (f).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.
Church of Jesus Christ on Hamilton
Sullivan, Ill.

(b) When, where, and how did you become a member of said sect or organization?
I was raised in the church and accepted the teachings

(c) State the name and location of the church, congregation, or meeting where you customarily attend.
Church of Jesus Christ on South Hamilton
Sullivan, Ill.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.
Leah Hardman
South Hamilton, Sullivan, Ill.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.
Return good for evil.
To love thy enemies and try to do them good.
To be married with solemnity

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.
I am not a member of any organizations other than the church.

[fol. 81]

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed conscientious opposition to participation in war

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU
Albert Paul	S. Mason, Lillyan, Ill	Community Leader	None
Don Van Mark	S. Mapella, Lillyan, Ill.	Community Leader	None
Paul Goodman	S. Hamilton, Lillyan, Ill	Community Leader	None
Donald Ring	Elem Lillyan, Ill.	Community Leader	Cousin

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, Malcolm Lobert Parker, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are in my own handwriting.

Registrant sign here M Malcolm Lobert Parker
(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example, registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

[fol. 82] Our church belongs to the Fundamentalist group and we share most of the basic doctrines of this group.

We differ in these regards: we have no outward ordinances such as baptism or the Lord's Supper. We are taught to take no kind of oath, nor legal affirmation; we believe in non-retaliation against evil but are taught to overcome evil with good.

We believe that to love God, our brother and our fellow-man, even our enemies, fulfills the laws of God and of Christ.

This law of love we are most conscientiously bound by the teachings of Christ to obey. In any conflict which may occur between obedience to the law of love and the demands of other laws to which we may be subjected we feel that we must choose obedience to the law of love.

LOCAL BOARD NO. 177
Selective Service System
May 26, 1955
County Court House
Sullivan, Illinois

[fol. 83] GOVT'S EXHIBIT B. No. 2

GOVT'S EXHIBIT
B No 2

Yes, I believe in a Supreme Being. I believe that I must live my life in complete accordance to the Bible, my conscience, and my understanding of belief. In regard to participation in war we are commanded to love your enemies and do them good also the Bible tells us to Return Good for Evil. I do not believe I can fight against my enemies and do them good.

I could not in clear conscience become a member of non-combatant status in the Army I fail to connect myself in any way to an organization whose main purpose is fighting would be contrary to Gods commands of non retaliation and to Christ's example for us

LOCAL BOARD NO. 177
Selective Service System

MAY 26 1955

County Court House
Sullivan, Illinois

[fol. 84] GOVT'S EXHIBIT B, No. 5

5

GOVT'S EXHIBIT
B No 5

8.4 South Main Street
Sullivan, Illinois
November 13, 1955

Local Board No 177
Selective Service System
County Court House
Sullivan, Illinois

LOCAL BOARD NO. 177
Selective Service System
NOV 14 1955
County Court House
Sullivan, Illinois

Dear Sirs:

In a letter I received from you on November 4, 1955 you said if I had any new evidence to send it to the local board.

First I would like to make it clear that I will accept 1-O classification and do the work set up in the program for conscientious objectors. I can not accept any other classification on account of my religious beliefs. I would like to discuss why I can not be in the armed forces or do Non-combatant work also I would like to discuss a situation that has arisen in the Justice Department.

Yours Truly,
Malcolm Parker
Selective Service
No 11-177-37-39

{fol. 85} GOVT'S EXHIBIT B, NO. 6

Sullivan, Ill.
Dec. 15, 1955

Selective Service System
Local Draft Board 177
Sullivan, Illinois

Gentlemen:

Malcolm Parker is a member of the Church of Jesus Christ of which I am pastor. His standing as a member is excellent since his life is consistent with the teaching he has received in every way.

/s/ Leah L. Harshman
LEAH L. HARSHMAN, Pastor
Church of Jesus Christ
Sullivan, Illinois

LOCAL BOARD NO. 177
Selective Service System
January 13, 1956
County Court House
Sullivan, Illinois

[fol. 86] GOVT'S EXHIBIT B, No. 7

PARKER, Malcolm Lebert
SSS No. 11-177-37-39

Appeal Board
Selective Service System
523 Plymouth Court
Chicago 5, Illinois

Gentlemen:

The history of the Church of Jesus Christ in Sullivan herewith submitted and the account of our doctrines as taught by my father S. R. Harshman is a true and faithful relation compiled by myself Leah L. Harshman pastor of the church.

The sources of the information herein contained are as stated in the Summary: i.e. the three books, "Sermons on Familiar Subjects"; "Christian Citizenship"; and "Commentary on Romans" published by my father between the years 1896 and 1902 in the order given: and articles published in a local weekly newspaper. The data concerning my father's early life is based on his Memoirs published after his death in 1913.

The articles appearing in the Sullivan Progress in the issues of June 6, 1918 and September 28th, 1918, (the latter republished from the Decatur Herald) from which I quote in Exhibit B are in my possession and can be found in the Progress files of those dates.

I am including also in Exhibit C copies of data relative to the draft of members of our church into the C.P.S. Camps during World War II and proof of our support given the Peace Churches in maintaining those camps.

The doctrines set forth in the papers submitted herewith are faithfully taught and faithfully practised by the members of our church. Any disobedience to these teachings unless repented of would result in the removal of the guilty person from our fellowship.

I solemnly declare that all statements, relations, and accounts herewith submitted are true.

LEAH L. HARSHMAN

LOCAL BOARD NO. 177
Selective Service System
January 27, 1956
County Court House
Sullivan, Illinois

[fol. 87] Since our rejection of a 1AO classification has been called to question by the hearing officer L. T. Allen, Jr. we are adding further information explaining in full our objections to acceptance of that classification.

The basic reason is the same as the basic reason for rejection of combatant service. This is Christ's teaching of the law of love as the ruling law in the life of his followers as already set forth in material already on file.

"Love worketh no ill to his neighbor therefore love is the fulfilling of the law." (Rom. 13:10)

"For this, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet, and if there be any other commandment it is briefly comprehended in this statement, "Thou shalt love thy neighbor as thyself." (Rom. 9:11)

This is the higher law to which Christ has added his command that we love our enemies. Fortunately a person who wishes to obey the law of love as a rule finds no hindrance to this obedience in the laws of the land.

But it is possible by assumption of a joint responsibility with others to make ourselves in part responsible for the acts of others. This we can do by willingly or voluntarily joining as a member thereof any organization, society or company, or uniting ourselves with any individuals who do not accept the law of love as the law regulating their responsibility toward others and their acts toward others.

For this reason we do not accept or exercise any of the powers and privileges of citizenship. We do acknowledge the right of the government to tax us and to expect of us obedience to the law of the land. The only exception to the duty to obey the law of the land is cases where obedience to the government's demands means disobedience to the command of God. But we do not vote or hold office since by so doing we would make ourselves in part responsible for the acts of others which we cannot control.

The teaching of the New Testament on this point is most concisely and clearly set forth by the Apostle Paul in 2 Cor. 6:14-18:

"Be not unequally yoked together with unbelievers, for what fellowship hath righteousness with unrighteousness,

or what communion hath light with darkness? And what concord hath Christ with Belial? Or what part hath he that believeth with an infidel? And what agreement hath the temple of God with idols? For ye are the temple of the living God: As God hath said, I will dwell in them [fol. 88] and walk in them and I will be their God and they shall be my people.'

"Wherefore come out from among them and be ye separate, saith the Lord and touch not the unclean; and I will receive you and will be a Father to you, and ye shall be my sons and daughters, saith the Lord God Almighty."

Since obedience to this command is made the condition of our acceptance as the children of God such obedience is to us a matter of first importance.

For this reason in addition to refusing the privileges of citizenship we do not belong to any secret societies, or business association of any kind: We do not own stock in any corporation: We do not belong to any religious organization beside the church: We will not join a labor union.

We believe that to accept membership in any of these organizations would be to disobey the command cited above and by that act to forfeit our acceptance and fellowship with God.

For this reason in addition to those given in material already submitted we could not conscientiously accept any classification as a member of the Army.

In our view there is no comparison from a scriptural point of view between doing government work in our factory and being a member of the Army in non-combatant service.

It is not in either case the work we do that makes the difference. It is the fact that by accepting a place in the Army we thereby become a part of it and by that act we accept a measure of moral responsibility for all that is done by that organization.

In proof that I am not straining a point in making the above statement I cite a letter which was published in "The Reporter" a paper published by the National Service

Board for Religious Objectors. It appears in the issue of November-December 1951 Volume VIII, Number 7.

The Article is headed "Notes on the Chaplaincy, Commissioned Officers, and Conscientious Objection" and contains quotes from "communications from the Navy and Air Force" as follows:

"I feel it only fair to advise you that Navy Regulations prohibit the appointment of an officer who is or ever has been a conscientious objector. "*Although a chaplain does not bear arms*, he is nevertheless considered a part of a combat outfit which is fighting for freedom and victory. To ignore this fact would encourage maladjustment and unhappiness were such a chaplain given a commission in the military service.

"We believe that every chaplain should understand that although he does not personally bear weapons, he is still part of a combat team which is fighting for victory in armed conflict."

[fol. 89] In like manner and for like reasons we believe that those who enter non-combatant service are still part of a combat team which is fighting — in armed conflict, although they themselves are not allowed to bear arms.

As we said in the beginning the reason for our refusal to accept non-combatant service is basically the same as our refusal to accept combatant service. It is because we accept it as a binding obligation to obey in all things Christ's Law of Love and to avoid any moral responsibility for those acts which to us seem contrary to that Law.

I am adding to citations from "Christian Citizenship and Other Sermons" already submitted the following passages from the sermon on "Unholy Fellowship" contained therein. These are not submitted in proof of the fact that the teachings which I have set forth above have been present in the Church of Jesus Christ in this place for the past fifty years.

The community in this place can bear witness also that these doctrines have been faithfully obeyed during this period of time.

LEAH L. HARSHMAN Pastor

LOCAL BOARD NO. 177
Selective Service System
January 27, 1956
County Court House
Sullivan, Illinois

[fol. 90]

Citations from Sermon on Unholy Fellowship
contained in
Christian Citizenship and Other Sermons

Be ye not unequally yoked together with unbelievers; for what fellowship hath righteousness with unrighteousness? and what communion hath light with darkness? and what concord hath Christ with Belial? or what part hath he that believeth with an infidel? and what agreement hath the temple of God with idols? II Cor. iv: 14-16

A little leaven leaveneth the whole lump. Gal.v:9

In that short creed, called the Apostles' Creed, which is said to be the most ancient of creeds, we are taught to say, "I believe in the communion of saints." This is equivalent to saying "the fellowship of saints," as the two words are synonymous. In fact the Greek word usually translated "fellowship" (koinonia), is in the passage quoted above translated "communion." "And what communion hath light with darkness." The word there translated "fellowship" is "metoche," which is a synonym of the other, and may be used interchangeably with it. Fellowship means partnership, comradeship, alliance, association. It exists only among equals. There is no danger of saints having spiritual fellowship with sinners. The danger is in an outward yoking together, which may corrupt the child of God, so that he may be dragged down from his high estate and become earthly minded and sensual again. It is against this danger that God would guard his people, and hence the injunction of the text. I repeat it that I may not be misunderstood, it is not against spiritual fellowship with unbelievers that we are here warned, for that is impossible, and so declared to be; but against an outward yoking together with unsaved persons. In discussing the question of unholy fellowship, the inquiry will be directed toward outward fellowship, or the unequal yoking of the believer with the unbeliever. The subject will be considered under three heads; the nature of such unequal yoking, the danger of it, and the means of avoiding it.

The first yoking that I will speak of is a partnership in business. It seems to me that a saint and a sinner would be unequally yoked together in a business venture. Unless the Christian had such a preponderance of interest in the partnership as to give him complete control, he would be compelled to be answerable for the conduct of his partner, and we are forbidden to be partaker of other men's sins. Many things are thought to be proper and admissible in business transactions by worldly men, that Christians cannot do with good consciences. The worldly standard of honesty and probity is quite different from the Gospel standard. So if we suppose that the unbeliever is honest in the accepted sense, still his conduct will not square with Gospel rule, and so the Christian in partnership with him would be responsible for conduct which he could not justify. Besides, the effect of such association is liable to be demoralizing to him. "Evil communications corrupt good manners." But if the unbelieving partner should not be strictly honest in the worldly sense, the matter is still worse. I might as well steal as to share the profits of another's theft. Competition in business is at the present time so severe, that many men think strict honesty to be impracticable. They would like to be honest if they could afford it. But because others will not be honest, they think they cannot be. They are like the London tradesman who excused himself to Dr. Samuel Johnson for dealing in smuggled goods. You know, sir, said he, that I must live. Dr. Johnson replied that he did not know about that, but he knew that he must die. Many men are so anxious about the means of procuring a livelihood, that they forget that they must die. The Christian feels that whether he lives or dies he must be honest. To him there is no possible excuse for dishonesty or double-dealing. Hence he will avoid the difficulties which will necessarily arise from partnership with an unbeliever, by keeping out of such unequal yoking. All men are, strictly [fol. 91] speaking, unbelievers, who have not saving faith in Christ. A mere profession of Christianity counts for nothing. The truly awakened sinner has much more faith than any worldly professor or Christianity has. A truly awakened person seeking Christ, is, in a qualified sense, a

believer, and would be counted with believers rather than with unbelievers.

Another way in which believers and unbelievers may be unequally yoked is in the marriage relation. This is called the conjugal state, which means a state which two persons are yoked together. In the marriage state a sinner and a saint would indisputably be unequally yoked together. This is more dangerous than mere partnership in business, as the relation of the participants is so much more intimate, and the union so much more difficult to break; in fact it is indissoluble except by death or unfaithfulness to the marriage vows. It would seem that the impropriety and danger of such an unequal union are so apparent that it would not be necessary to do more than to mention the matter to convince anyone of it. There can be so little in common between a soul seeking God and delighting itself in Him, and one who loves the world and desires the things of the world, that there would seem to be no danger of such mesalliance. But observation shows that the danger exists, and that God's people need to be warned against it.

There are many other yokings with sinners which might be specified, but it is not perhaps necessary to consume space to do it, and I will come to the matter to which the Apostle has especial reference in the text.

Many persons when reached by the Gospel are found in oathbound secret societies. I have nothing to say of such fraternities for worldly men and women. I do not suppose that they are any worse than other institutions of this world. I cannot see or feel the propriety of a crusade against these societies from a worldly standpoint. But they are an unfit place for a child of God, since in them he is unequally yoked with sinners. Remaining in them he is unavoidably made responsible for other men's sins. He is where God forbids him to be. There are moral reform movements with which the Christian cannot cooperate. In fact there are none with which he can consistently do so; for they attempt to yoke saints and sinners together for reform work.

As a Christian is responsible to God for the means placed in his hands, he cannot consistently place his money in any association or corporation where it is out of his control, no matter how convenient or profitable it may seem to be. "Be not partaker of other men's sins; keep thyself pure", is as pertinent advice to each Christian as it was to Timothy. The first essential thing to the preservation of a pure fellowship is the recognition of no bond of union except a spiritual one. Any fleshly bond of union, however slight, will prove a snare to the church.

If men and women will thus come out from the ungodly and separate themselves from sinners and refuse to touch the unclean, God promises to be their Father, and that they shall be His sons and daughters. As such they are the children of His love in a peculiar sense; their interests are especially dear to Him; he that toucheth them, toucheth the apple of His eye. He will avenge them upon their enemies. He will regard them with a solicitude so tender and true that it is beyond our comprehension. The mother may forget her suckling child that she could not have compassion on it, but God cannot forget His people. They are graven on the palms of His hands; the hairs of their heads are all numbered; and God shall supply all their needs according to His riches in glory. May God enable His people to purge themselves from all the vessels of dishonor, that they may be vessels unto honor sanctified and meet for the Master's use, and prepared unto every good work.

LOCAL BOARD NO. 177
Selective Service System
January 27, 1956
County Court House
Sullivan, Illinois

[fol. 92] CONTENTS OF FILE NO. 1

1. History of the Church in Sullivan
2. Exhibit "A"—Excerpts from the writings of S. R. Harshman
   1. Sermons on Familiar Subjects
   2. Christian Citizenship
   3. Commentary on Romans
3. Exhibit "B"—Excerpts from local newspapers
   1. The Sullivan Progress
   2. The Decatur Herald
4. Exhibit "C"—Copies of Financial Statements and other material proving participation in National Service Board C.P.S. Camps during World War II.

[fol. 93]

HISTORY OF THE CHURCH OF JESUS CHRIST SULLIVAN, ILLINOIS

Our church in Sullivan, generally known locally as the "Harshmanite" church, was established here during the 1870's by Rev. S. R. Harshman, my father.

He had been a member of the Illinois Methodist Conference since the year 1864 acting as a supply or junior preacher while attending Illinois College in Jacksonville, Illinois. Later he was given a pastorate in Jacksonville where he acted as pastor of a recently created church. While pastor he built the Brooklyn Methodist Church still standing in that city.

It was during this pastorate that he became a member of a small group of people, mostly Methodists, who met every Tuesday afternoon for what they called a "Holiness meeting". He was a regular attendant at these meetings and many members of the group became members of his congregation. This led to his church being called a "Holiness" church.

His devotion to this Wesleyan doctrine of holiness of heart and life and his enthusiastic insistence upon it finally caused him to separate himself from the Methodist Conference and become an evangelist. Seeing the displeasure of his superiors with his course he did not make application for his final ordination.

See Par 11, Exhibit B

Free of ecclesiastical domination he was at liberty to formulate his teachings according to his understanding of Christ's gospel as set forth in the New Testament. Having thus set his course he faithfully taught the truth as he saw it in Christ Jesus throughout his life. He met with the persecution that usually follows such a course but was able to gather about him a group of people who shared his zeal for the truth and its full application to their lives.

See Par 1 & 5, Exhibit A

We were taught and have continued to teach that our first duty is obedience to God and Christ: that the present

system of government of earth are ordained of God and that we owe the government under which we live respect and all possible obedience. If any conflict between the commands of Christ and the laws duly authorized by the government should arise we must unhesitatingly obey the law of Christ. The consequences of such a choice must be accepted with meekness.

See Par 6, Exhibit A

We were taught that we must not take any oath or any substitute for an oath: that a simple statement of fact is commanded since more than this "cometh of evil", as Christ taught.

We were taught that the law given his followers by Christ forbids retaliation against evil which the law of Moses formerly allowed.

If any smite us on one cheek we should turn the other: if any man sued us at the law and was able to take our [fol. 94] coat we should give him our cloak also: if compelled to go a mile we should freely go a second mile. That is we should give any evidence necessary to demonstrate our freedom from resentment of injury. Christ gives us a surpassing example of this spirit when while exposed on the cross to the hatred and contempt of the multitude he prayed, "Father, forgive them; they know not what they do."

See Par 8, Exhibit A

Finally, we were taught and have continued to teach, that we should love our enemies and pray for them that despitefully use us and persecute us. For what reason? That we "may be the children of our Father which is in Heaven," for "He maketh his sun to rise on the evil and the good and sendeth rain on the just and the unjust."

See Par 9, Exhibit A

Obedience to these and all other commands of Christ we were taught and have continued to teach is the Christian warfare. This warfare is not against flesh and blood but against spiritualities and against powers, against wicked spirits, against the rulers of the darkness of this world.

See Par 10, Exhibit A

The weapons of this warfare are not carnal weapons such as man uses against man but the sword of the Spirit which is the word of God; which is "mighty through God to the pulling down of strongholds; casting down imaginations and every high thing that exalteth itself against the knowledge of God".

History records one such warfare which raged for 280 years. History also records the victory that finally came after thousand of lives were sacrificed in the struggle in which every weapon of torture and agonizing death was used against the obedient followers of Christ.

The scripture also records in the Revelation of John the warfare and its victory. "And they overcame him by the blood of the Lamb and by the word of their testimony and they loved not their lives unto the death." Revelation 12:11

For it was Satan himself, as the Great Red Dragon, who ruled in pagan Rome in the person of the persecuting Caesars. These rulers claimed to be divine and demanded the worship of their subjects including the Christians. The refusal of the Christians to give this worship brought on the long struggle in which it was established that Christ indeed has "all power in heaven and in earth." For through the faith, the testimony and the willingness of His followers to die for their obedience to His word Christ's power over His enemies was demonstrated. Roman paganism was cast down from its place of power.

In this way Christendom came into being. During the ensuing centuries of the Middle Ages the liberty gained in this costly victory was gradually surrendered to the encroaching power of church and state under the Roman Papal Rule. Again freedom of consciences was denied to men and the law of Christ was hidden under a weight of rules and ordinances made by man.

The Reformation of the 15th century broke the Papal bonds and once again men could hope to worship God according to the word of God as they understood it. This hope was not realized fully for the Protestant churches [fol. 95] that came into being after the victory were State churches, supported by taxes and governed by state

laws. No man could preach the gospel or even read scripture in public unless licensed to do so by the State. This laid the foundation for the persecution of dissenters from the State church by the State itself. Such persecution soon followed the establishment of the State churches.

In the year 1751 my father's paternal ancestor with two brothers emigrated from Bavaria to this country to find freedom of conscience and liberty to worship God according to their consciences. They first located in Lancaster County, Pennsylvania with their wives and children. Later my father's great-grandfather removed to Maryland and his descendants later made their homes in Ohio. The original brothers were of the religious group called Dunkers. In the intervening years this fact was lost sight of and we did not learn of it until after my father's death when the discovery was made by a writer of the family history.

Many other such religious refugees came to this land both in the seventeenth and eighteenth centuries. Due to the large proportion of such emigrants in the early days of the American Colonies religious liberty was much prized. So much so that a guarantee of such liberty was written into the Constitution of the United States of America. The freedom to worship God according to one's conscience.

See Par 12, Exhibit B

Up to the time of World War I the church in this place had opportunities to suffer for their faith. These opportunities for the most part were related to minor threats of financial loss. One one occasion the threat of violent death came close to accomplishment. But no reprisal was attempted and punishment meted out to the would-be-murderer.

See Par 13, Exhibit B

With World War I and the first enactment of military conscription a great effort was made to force the members of the church here to give obedience to the demands of the law rather than to the demands of con-

science. The only alternative to active military service was non-combatant service. This was specifically allowed only to the Quakers. Other faiths were given the opportunity of proving their right to such a status.

Our situation was complicated by the inability of our people to take either the affirmation or the oath. Unless one could take either the oath or the affirmation classification in Class I-A immediately followed submission of the returned questionnaire. Due to this our men were being put in Class I-A. as rapidly as their questionnaires returned.

Two of our boys were inducted into service. One, who weakened under pressure, took the affirmation to his questionnaire and was given non-combatant service. Under the constant pressure from his chaplain and officers who continually argued with him against his stand he became insane and has remained so ever since. The second young man was sent to camp and obeyed as far as he [fol. 96] could the authority of those over him. He refused to use a gun in any way. He died of the flu enroute to the front in France about two weeks before the Armistice was signed. When November 11th came a young married man with four children had received his order to appear for induction and several others in similar situations had been classified in I-A.

During the six months in the year 1918 following the induction of two of our men and previous to the Armistice all members of our church who were employed by people in the town were relieved of their jobs. All who were in business were thoroughly boycotted. It could be seen that if the war continued long our very existence would be threatened. Efforts were made to cause imprisonment of our people on trumped up charges, threats of mob violence were freely made and individual personal assaults were made. Through it all we held firmly to our obedience to the commands of Christ.

Following this war which had advertised our belief thoroughly we endured for several years continual breaking and entering of our homes by thieves who knew that we would not prosecute such violence against our property. However when the Lord saw fit to end this abuse

he did so very completely and very effectively without any action whatever on our part.

When we saw World War II approaching we felt the need of a means of livelihood dependent upon an area beyond that immediately surrounding us. We had started a small manufacturing enterprise in 1932 to give employment during the depression. We enlarged these operations in 1937 and in 1940 built a factory building and purchased new machinery for volume production. When the war came in 1941 we were not yet established in volume production and consequently we had no allotment of raw materials. In this crisis we decided that government business would be necessary in order to give employment and full production. So it came about that the most of our production during World War II was on government work. We felt that we could do such work in all good conscience. From a business point of view we would have preferred to build up our own business in civilian lines.

Right here I wish to point out that we are not political pacifists. We do not feel that it is our mission to change existing governments. We do not try to abolish war. Christ said; "If my kingdom were of this world, then would my servants fight that I should not be delivered to the Jews; but now is my kingdom not from hence."

Our warfare is a spiritual warfare to the end that the kingdom of Christ may be maintained on the earth. Governments as now constituted are maintained and administered by physical force. War is a necessary means of their existence and defense. This we recognize. We cannot participate in such governments nor take part in any way in the hatred and violence and slaughter which is war. We find it impossible to love our enemies and at the same time go about to kill them.

[fol. 97] In regard to engaging in war production it seemed to us to resolve itself into a question as to our moral responsibility for the end use of any article produced by our labor in war or peace. Life for the Christian would be very complicated indeed if he could produce and sell nothing that could be used for an evil purpose by anyone who bought it. That is a responsibility impossible for

anyone to discharge satisfactorily and at the same time live in this world. We are not required to attempt the impossible.

If it is wrong to produce anything which is helpful to the government in time of war then it is wrong to engage in farming at such a time. In fact logic would force one in such a time to refuse to engage in any constructive effort if it is wrong to do any work which helps the war effort.

On the other hand we do owe the government any service it might demand that does not involve personal participation in the act of war. We are in fact willing to produce anything needed by the government when it is engaged in carrying on war. We do not feel that doing so makes us responsible for war or the waging of war. We would not willingly engage in the production of any article used directly to cause death. That would be repugnant to our principles and mission in this world.

We cannot willingly be a part of army personnel under military command. To do so would be to put one's self voluntarily in the way of temptation. This we must not do.

Exhibit C

During World War II the first thirteen men who received their papers were with two exceptions put into class 4-E. One of these was classified 4-F. The other after first being put in 4-E was at his father's insistence reclassified in I-A. The case was appealed and although the young man was certified for 4-E by the F. B. I. and by the judge who acted for the Attorney-General of the United States in this district the appeal was rejected. Part of the difficulty was caused by our ignorance of the proper procedure and part by the antagonism inherent in our situation and by the fact that the father of the young man in question, Albert Price, was not a member of our church.

Albert in this difficult situation made his own decision and failed to appear for induction. He was convicted on this charge in Federal Court but due to the evidence of good faith in his request for 4-E classification his sentence was commuted to three years in the C.P.S. Camps.

Exhibit C

We had twelve men in the C.P.S. Camps for from two to four years and by the end of the war had fourteen there. We paid all expenses assessed against them amounting to around $6,000.00 in addition to providing them with all necessary money for personal expenditures. We also contributed to the fund for dependents of conscientious objectors who were left without support when the husband and father was inducted.

[fol. 98] The church here received the usual evidences of hostility for a few months such as painting our chapel yellow and threatening to harm us in various ways.

Our pastor, the Rev. J. R. Bradley received this time the personal attack when he was struck and knocked down as he went about his business in the downtown district. He was a man over eighty years old and had done nothing to provoke the attack. Nothing was done about it by ourselves or anyone else. For the last two years of World War II the position taken by the Sullivan Church in relation to war was seemingly accepted by all.

With the beginning of the 1950 draft of men between the ages of 19 and 26 years our men after submission of Form SSS150 were given a 4-E classification without question. I was asked to certify that all those asking such classification were members in good standing of the church here. This I did.

Without warning, a few weeks ago they were all put in Class 1-A. The only reason that has been given by any member of the board was given by J. A. Sabin, Secretary, during a speech made to the members of the senior class of the Sullivan Township High School.

He stated that about 25 conscientious objectors had been put in class I-A by the board for the purpose of delaying induction of 25 other young men. By this move the board hoped to gain a delay of a month or two for other draftees. In the meantime these conscientious objectors would report for their physicals and then appeal their classification to the appeal board and might make a further appeal to the President. The 1948 law, he said, gave conscientious objectors exemption but the new law might not do so, in which case they would be in line for induction. This was reported to us by members of the

senior class who heard the address and who are also members of the church. Since this report tallies with the facts as they are I presume it to be correct.

We have asked for a hearing before the local board in which we wish to put our cases on record.

With the rise to world stature of the anti-christian State Communist Russia we are presented again with our ancient enemy, the Deistic State. For just as the Caesars claimed power over both the loyalty and the worship of their subjects so also does Russian Communism, Lenin and Stalin, his prophet, are exalted and honored as dieties, not as men. The cruel tyranny exercised by such rulers over the minds and bodies of men equals that of the despots who ruled the ancient world.

The threat of Russia to Christendom is both physical and spiritual. In such a warfare we have a part. For it is [fol. 99] our province to fight against "the rulers of the darkness of this world," "against spiritualities and against powers of darkness". We carry the weapon that is effective against such an enemy, "the sword of the Spirit which is the word of God". And who can say that such weapons are ineffective when history records their victory over paganism entrenced in the imperial power of mighty Rome?

For truly the heathen power now appearing shall fight against Christ himself, for it is written, "He shall also stand up broken without hand." "Without hand" means by a power not human but divine. For spiritual evils can only be destroyed by spiritual powers.

Our faith is in this: that the Creator of all things is able to cast down any and all enemies of God and Christ. But whatever the result of the impending world conflict between Christendom and Russian Communism might be we have no other possible alternative. It is still our first obligation to obey the plain teachings of the gospel of Christ contained in his sermon on the mount. By doing this we will be fighting most powerfully and most effectively against the foe of Christendom. This is our faith.

[fol. 100] EXHIBIT A

Excerpts from "Commentary on Romans"

Par. 1

Rom. 13:1 "Let every soul be subject to the higher powers. For there is no power but of God: the powers that be are ordained of God."

(Comment) "The duty of Christians to be subject to the present existing civil governments is here plainly set forth. In fact, the duty of subjection is the only one that is enjoined upon them toward these governments; they owe them nothing further. And even this requirement has its limitations. The apostles laid down the principle that our duty to God was paramount to our duty to man. When therefore human authorities require us to disobey God, and we must choose between the two powers we must obey the paramount authority, and patiently take the consequences. The statement that "the powers that be are ordained of God," has not the full force that is usually ascribed to it. The fact that God instituted civil government among men is undeniable; but that he authorizes existing governments remains to be proven. I understand the scriptures to teach otherwise; that these governments exist because men will not recognize the rightful ruler, the Lord Jesus Christ. It is because they say, "we will not have this man to rule over us," that these governments are needed. But since they will not have Christ's rule, they must have some other authority to preserve order in the earth. But, objects some one, "Are not these governments ordained of God?" The Greek word "tetagmenai" here rendered "ordained", is from a verb signifying to arrange, station, set in order, etc. It is a military term from which our English word "tactics" is derived. The apostle simply asserts that human governments are arranged or set in order by God. God overrules in the governments of the world. Consequently, whatever governments exist, do so by His permission, and are according to His order or plan. He "guides the whirlwind and directs the storm", though He does not originate them".

Par. 2

Rom. 13:2 "Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation."

(Comment) "We are to understand from this that as God overrules in the governments of the world, we are to accept the present arrangement in human affairs as God's order or plan, and to submit to it without complaint. Governments may be oppressive or tyrannous, but Christians are forbidden to resist them, but are required to accept them as God's will toward them. To resist or oppose existing governments is to resist the order of God, and will involve men in condemnation. We may refuse obedience to demands requiring disobedience to God, but must meekly accept the results of such disobedience. But no Christian can innocently engage in any insurrection or rebellion against any form of government however oppressive it may be. It is not the Christians business to reform human governments, but to submit to them. That form of Christianity, therefore, which encourages men in rebellion or insurrection against any government must be a false religion. The government of the Roman Empire, under the Caesars was tyrannical and oppressive. [fol. 101] Some of those emperors were monsters of cruelty and lust, yet it was to this tyranny to which the apostle forbids resistance. If it was unlawful to resist a Tiberius or a Nero, whom would it be lawful to resist? It may be asked how human governments are to be improved under such conditions. They never will be improved, and it is not in God's plan that they should be. They are to prove a complete and disastrous failure."

Par. 3

Rom. 13:3 "For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same."

(Comment) "The general intention of governments is to restrain and punish evildoers; those who are lawabiding have nothing to fear. But it is impossible that any law

made by man should bear equally upon all those subject to it, and it may prove oppressive where there is no such intention. Laws which are for the general good may prove to be great evils in individual instances. But in general, if we do good, we need not fear the laws.

Par. 4

Rom: 13:4 "For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

(Comment) "This was written of those pagan emperors who despised God and His religion. That they were God's ministers in any sense that would make Him responsible for their conduct it is preposterous to assert. Imagine the imperial fiddler as God's representative while Rome was burning, and the bodies of His people were being utilized as torches. Yet Nero was God's minister in the same sense as is any king or potentate who calls himself Christian. They reign not "by the grace of God," but simply by His permission. Nor is an elected ruler any more God's representative than one who rules by hereditary right. They are all His ministers, just the same as storms, earthquakes, and pestilences are. God uses them to accomplish His purposes as He did Pharaoh and Nebuchadnezzar.

[fol. 102]

Excerpts from "Christian Citizenship"

Par. 5, p. 46-48

"The Christian's only duty toward human governments is that of subjection. He is to render unto Caesar the things that are Caesar's. "Tribute to whom tribute, custom to whom custom, fear to whom fear, honor to whom honor." But this does not relieve him from the obligation of rendering unto God the things that be God's. In other words, Caesar has no authority to come in between him and his duty to God. As a rule, the requirements of human governments do not

conflict with duty toward God. Such governments are intended to be for "the punishment of evildoers, and for the praise of them that do well." But there are exceptional cases where it is otherwise. This may be intentional, but is usually unintentional. What must the Christian do under such circumstances? In cases where human authority requires what God forbids, or forbids what God commands? The answer is plain, God's law is the higher law, and its demands are the stronger. In Acts iv:19 we have the Apostle's answer: "But Peter and John answered and said unto them, Whether it is right in the sight of God to hearken unto you more than unto God, judge ye." It is universally recognized fact that God's authority is paramount; and Peter and John confidently appealed to the conscience of the judges in the matter. They believed it to be an undeniable fact that God must be obeyed rather than man, when there was a conflict of authority. So the Christian must do as these Apostles did and obey God, and meekly take the consequences of disobeying man."

Par. 6, p. 44-45

"Jesus says: "My kingdom is not of this world: if my kingdom were of this world then would my servants fight, that I should not be delivered to the Jews." John xviii:36. If it was not lawful for God's people to fight to establish Christ's rightful authority, how can it be lawful for them to fight to establish authority that usurps his right? I know that casuists pretend to distinguish between righteous and unrighteous wars, and insist that while it is unlawful for a Christian to fight in one, it is lawful for him to fight in the other. But what could be a more righteous war than one waged to establish Christ's authority? But Christians are forbidden to fight even then. I know that a false Christianity feels forced to find some justification for the Christians fighting, else their religion would not fit into the world system. But the incongruity of a man who professes to love all mankind, even his enemies, being engaged in trying to kill some of them, is too apparent to be explained away."

Par. 8, p. 275

The Christian, like his Master who prayed for the forgiveness of His murderers, realized that his persecutors know not what they do. He feels a pity for their blindness and malice, and feels kindly toward them whatever they may do. To be able to love our enemies is the test of Christianity. The publicans can love them who are their friends and benefactors. Only the man who has the love of God shed abroad in his heart can be kind to the unthankful and to the evil. He can bless them who curse him, and pray for those who persecute him; not pray at them as some do."

[fol. 103]

Excerpts from "Sermons on Familiar Subjects"

"The Christian's life is purposely one of conflict. God's people are not in this world simply to have a good time. While the religion of Christ gives men peace with God and peace in their hearts, it brings them into immediate antagonism with the system of things around them. In this respect, Christ came not to bring peace, but a sword. The child of God is in an enemy's land. He is in a world where the powers of darkness have control. He must fight if he would reign. But "we wrestle not against flesh and blood, but against principalities and powers, against the rulers of the darkness of this world; against wicked spirits in the heavenly places." With these he must try conclusions. Against these he must wrestle unceasingly. By these he will be continually assaulted. He can look for no relief from Satan's onslaughts, until probation ends."

"We must fight this good fight that we may lay hold on eternal life.

"By all hell's host withstood,
We all hell's host o'erthrow;
And conquering them through Jesus' blood
To further conquest go."

Jesus hath conquered hell. He hath vanquished Satan single handed, and through Him we may conquer also, but only through Him. We shall conquer our adversary only because "Greater is He that is in us than he that is in the world." Our one offensive weapon, the sword of the Spirit, the Word of God, is one that our enemy cannot withstand. It were foolhardiness to trust to any other. Wielding this weapon vigorously, and meanwhile covering ourselves with the broad shield of faith which is effectual in quenching every fiery dart of the enemy, we can surely march to victory. A bold resistance to Satan will always cause him to flee."

[fol. 104] EXHIBIT "B"

In the Sullivan Progress, a local weekly newspaper, in a copy that appeared on June 6, 1918 in an article entitled "A Little History and a Little Comment" an account is given on the attitude of the members following the shooting of one of my father's congregation during a religious meeting in his home in the early history of the church in this place:

Par. 9

"Although a number of the people (of the congregation) knew who fired the shot not one witness would testify before the grand jury. The circuit judge threatened punishment for contempt of court, but all to no purpose and there was no prosecution (of the would-be-murderer).

Par. 10

The zealous leader of the band lived the remainder of his life here and enjoyed the respect of everyone who made his personal acquaintance. His followers have lived quiet, peaceable, industrious lives. They do not vote or take part in public life although they always seem interested in political and public questions. They were never known to begin a law suit, but if attacked in court they will fee a lawyer and defend against the suit although none of them will testify in the case.

Sometimes one will hear their sincerity questioned but never by people who know them well. . . . Measured by all known rules such people must be pronounced sincere however mistaken we may think them to be.

In an article published a few days previous to Sept. 28th in the Decatur Herald and reprinted in the Sullivan Progress of Sept. 28, 1918 the people of the group known locally as Harshmanites were again the subjects. Excerpts follow:

Par. 12

". . . the Harshmanites, the sect whose members have submitted to every indignity and persecution for months past because of their alleged disloyalty.

Par. 13

Members have been assaulted in the street; bricks have been hurled at their homes and places of business; they have been hailed before the Federal Grand Jury all without resistance on their part.

Par. 14

Sullivan does not countenance the persecution of these people who in normal times would pass as model citizens.

Par. 15

It is with the purpose of finding out just what were the causes of complaints against the Harshmanites and what was the feeling of the people of Sullivan toward them that the Herald conducted its investigation. That investigation disclosed that the Harshmanites are simply Tolstoyan non-resistors, conscientious objectors to fighting or assisting in fighting but willing that their government should combat German autocracy and even upholding the government in its course. Their philosophy is unintelligible to any save those who take it literally the Biblical injunction to 'turn the other cheek'.

LOCAL BOARD NO. 177
Selective Service System
January 27, 1956
County Court House
Sullivan, Illinois

[fol. 105] GOVT'S EXHIBIT B, NO. 9

MEMORANDUM OF INFORMATION RECEIVED AT BOARD MEETING

To Be Filed in Cover Sheet of: (Registrant's Name) MALCOLM L. PARKER (SS Number) 11-177-37-39

Following is summary of information received at local board meeting held (Date) 9-21-56:

Time appeared: 8:47 P.M. Time dismissed: 9:05 P.M.

The registrant asked the local board if Mr. Thomas King could sit in with him during his personal appearance. The local board granted this permission. The registrant stated that he made his home with Mr. King.

Registrant stated that he requests the I-O classification due to his religious beliefs. That he cannot accept the I-A-O classification because it is against his religion to take an oath and does not consider the Armed Forces to be all "Christians" in which he remarked that he could not become a part of a military machine, even under the non-combatant authority, to his notion, and be a real "Christian". He further explained that he could not take orders, if told to shoot, because it would violate his religious principles. The local board explained that non-combatant service was one who would probably enter the medical core, become a cook, or a chaplain, in which one would not carry a gun. The registrant felt that his file fully covered his reasons that he requests the I-O classification and had no additional information.

Mr. King and the local board discussed in more detail the religion of their church in which affidavits are filed by their pastor in the registrant's cover-sheet. Mr. King stated that the registrant became a member of their church of his own free choice, daily living their principles and beliefs.

The local board felt that they were doing their best to acknowledge the registrant's religion, in all due respect, by giving him the I-A-O classification and that they had thoroughly and completely read all material in the regis-

trant's file. After careful consideration, they felt the registrant was not qualified for a I-O classification.

The above information was received from:

E. Ward Minor, local board secretary
Jonas A. Sexton, board member
Harris L. Bone, board member
Donald L. Wood, board member
Malcolm L. Parker, registrant
Mr. Thomas King, friend of registrant
(Name of registrant, dependent, board member, clerk or other person who provided the above information)

Signed: (Mrs) Dorothy H. Wood
(Signature of board clerk who prepared this Memorandum)

PM-1104

Meeting held at [illegible] were:

E. Ward Moore, Local Board [illegible]
James A. Taylor, Board member
Harris L. Bone, Board member
Donald L. Wood, Board member
Thomas King, Registrant-[illegible]
Malcolm L. [illegible], Reg. Local

SELECTIVE SERVICE SYSTEM
Selective Service System
OCT 8 1951
County Court House
Sullivan, Illinois

Time appeared: 8:45 P.M. To 9:05 P.M.
Date 9-21-51

Malcolm [illegible] registrant, asked if Mr. King could be present because C was under 21 year old. The board gave permission.

C. said that C could not accept the (1-A-O) classification, but would accept the (1-O) classification. My religion does not permit me to accept the (1-A-O) classification non-combatant service as a part of the armed forces where main purpose is to fight and kill, and you have to take an oath to get in, and I don't believe in that. Jesus told us to love our enemies and try to do them good. I do not think you would be doing so in the non combatant service which is a part of the army. C would not be serving Christian way if gave the order to shoot. I could not do so for it would violate my religious belief and principles.

C. said C [illegible] my folks covered every reason why C could not accept the (1-A-O) classification.

[illegible] were very complete.

GOVT'S EXHIBIT No. 12

[fol. 108] GOVT'S EXHIBIT B, No. 15

SELECTIVE SERVICE SYSTEM

INDIVIDUAL APPEAL RECORD

Serial No. [illegible]

PARKER Malcolm Robert
(Last) (First) (Middle)

Selective Service Number 11 177 32 39

Classified by local board in Class I-A-O until 19-

Date classified September 27, 1956

☒ Forwarded on appeal taken by Malcolm L. Parker, Registrant

Date forwarded to Appeal Board October 18 1957

[illegible]
Clerk of Local Board

APPEAL BOARD

MINUTES OF ACTION BY APPEAL BOARD DEC 12 1956

Appeal Board EASTERN DISTRICT for the State of [illegible]

(Street and number)

Classified in Class I-A-O until 19 by the following vote:

Yes 3 No 0

~~Date of mailing~~ DEC 13 1957
(Date of transmission to Appeal Board)

[illegible]
Member or Clerk of Appeal Board

INSTRUCTIONS: The local board will prepare this form in duplicate. The original will be stapled or otherwise securely fastened to the inside of the front cover of the Cover Sheet, SSS Form No. 101, of each file forwarded to Appeal Board, and the copy will be retained in the local board files in lieu of the Registrant's Cover Sheet and attached to the charge-out card.

SSS Form No. 100 [illegible] Selective Service Sys.

GOVT'S EXHIBIT
No. 6

DEC 18 1957

County Court House,
[illegible], Ill.

fol. 109 GOVT'S EXHIBIT B. No. 16

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

[Seal]

Address Reply to the
Division Indicated
and Refer to Initials and Number

June 25, 1957

Chairman, Appeal Board, Eastern
District of Illinois
Selective Service System
523 Plymouth Court
Chicago 5, Illinois.

Re: Malcolm Lebert Parker
Conscientious Objector

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. F. M. Brittingham, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resume of the Inquiry attached hereto and made a part hereof.

Registrant is twenty years old and he quit Sullivan High School at the end of his sophomore year in 1954. His only employment, other than for Community Industries, (a company organized by the Harshmanites for the primary purpose of providing employment for members of that faith), has been for the Russell M. Harshman Concrete Company for several short periods in 1955 and 1956. Registrant's parents belong to the Church of Jesus Christ, otherwise known as the Harshmanite Church, and registrant was reared in and is a member of

that faith. He claims exemption from both combatant and noncombatant military training and service by reason of his religious training and beliefs.

[fol. 110] A Resume of the Inquiry reflects that neighbors, references, acquaintances, and religious associates unanimously advised that the registrant is of good character and reputation. The Pastor of the registrant's church advised that registrant is faithful in his attendance at church and conducts his life in accordance with the teachings of his faith.

Registrant appeared for his hearing accompanied by four witnesses. He told the Hearing Officer that his opposition to military service, like that of other members of his faith, is based largely upon the Commandment, "Thou shalt not kill," and in this respect he explained that Harshmatines believe only in passive resistance and would not kill even in self-defense. He continued that his objection is also based upon the Biblical injunction "Be not unequally yoked with unbelievers." As to this admonition, he explained that Harshmanites refuse to enter into partnerships or associations with persons not from their own denomination and for this reason do not marry outsiders nor enter into business partnerships with them inasmuch as they contend that such an association with unbelievers would make them responsible in some degree for the actions of such unbelievers which responsibility they refuse to accept. This refusal to associate with and be responsible for persons who are not Harshmanites is the justification for their opposition to noncombatant military training and service.

The registrant explained that although Community Industries does not manufacture munitions in the ordinary sense of the word they do manufacture other items for military consumption such as tents, WAC uniforms, candy for army rations and some sort of valve used on Naval vessels and other items. He said that it would not be considered immoral or a violation of their Christian duty to manufacture ammunition and that their reluctance to manufacture munitions is not a matter of religious beliefs but merely a matter of preference. The registrant con-

cluded by verifying that all of the above beliefs and opinions of the Harshmanites, in general, are also his own personal beliefs and opinions.

The Hearing Officer was impressed with the truthful and frank attitude of the registrant during the course of the hearing. He concluded that there is no doubt that the registrant is a sincere and conscientious member of his denomination and that he is by reason of religious training and belief conscientiously opposed to combatant train- [fol. 111] ing and service in the armed forces. He found, however, the distinction which the registrant attempts to draw between noncombatant participation in war as a civilian and similar noncombatant participation as a member of the armed forces is too tenuous for recognition. Consequently, he concluded that the registrant failed to sustain his claim with respect to noncombatant service. Accordingly, he recommended that registrant be granted a I-A-O classification.

The courts have consistently upheld the I-A-O classification for a registrant who has expressed willingness to do work in an industry supporting the war effort. See *Franks* v. *U.S.*, 216 F.2d 266; *Clark* v. *U.S.*, 217 F.2d 511, and *White* v. *U.S.*, 215 F.2d 782, cert denied, 348 U.S. 970.

That these views which the registrant has adopted are the views of his church constitutes no defense to the registrant. On this point the court in *U.S.* v. *Moore*, 217 F.2d 428, reversed on other grounds, 348 U.S. 966 stated:

> "Harshmanite doctrine attempts to rationalize the seeming inconsistency in the dual position which this church has taken toward wartime economy on considerations of responsibility. Thus the aloofness of the factory from the scene of combat is cited in support of the argument that the church merely manufactures products but does not accept the responsibility for their ultimate use since they are not directly involved in taking lives. It is not our function to evaluate this position. The weighing of the ultimate responsibilities arising out of the manufacture of

material for the armed forces on the one hand against those arising out of noncombatant service on the other, is a question for the Selective Service Agencies, not the courts. Thus defendant stated, 'We do not consider ourselves responsible for what is done with the finished products which we manufacture since it is not directly involved in taking lives.' The Presidential Board certainly could have concluded that the expressed objection extends only to direct involvement in taking lives and might have believed as does counsel for the government that 'Logic finds no more welcomed door to the I-A-O classification.' "

[fol. 112] The Department of Justice concludes that whereas the registrant has established his conscientious objection to combatant military training and service he has failed to sustain his claim with respect to noncombatant service. Accordingly, we recommend that registrant be granted a I-A-O classification.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

/s/ T. Oscar Smith
T. OSCAR SMITH
Chief, Conscientious Objector Section

[fol. 113] Resumé of the Inquiry

Re: Malcolm Lebert Parker—
Conscientious-Objector Claimant

Registrant was born on April 30, 1937, and he quit Sullivan High School at the end of his sophomore year in 1954. There is no derogatory information contained in registrant's student personnel file. Former instructors advised that they knew of no derogatory information with respect to registrant's general reputation and added that he only associated with members of his religious group while at school.

Registrant was employed by the Russell M. Harshman Concrete Company for several short periods in 1955 and 1956. His employer described him as an active and conscientious member of the Harshmanite Church who practices according to the teachings of the church. He added that this employment was satisfactory and was to keep members of the Church of Jesus Christ employed during the temporary slack period at Community Industries which was an organization operated by the Church of Jesus Christ. Registrant was employed on a part-time basis by Community Industries between July 1952 and May 1954, at which time he began full-time employment. He has been employed since that time with the exception of short periods of time in 1955 when there was a temporary curtailment in employees due to a work shortage. Registrant is considered an excellent employee.

Neighbors advised that registrant is of good character, that he is faithful in his attendance at church and that insofar as they know he is sincere and lives according to the teachings of the Church of Jesus Christ.

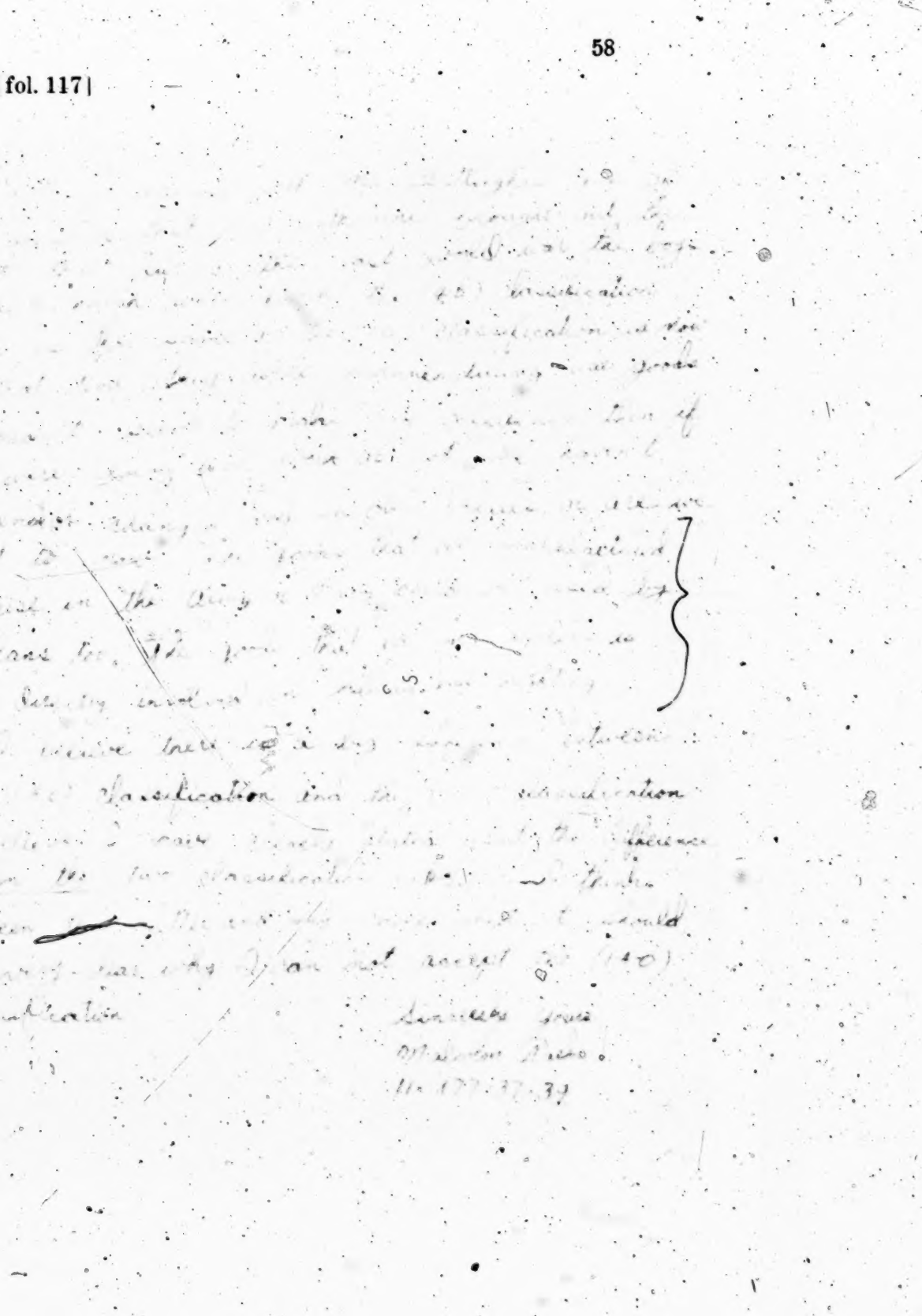
A reference advised that registrant was raised in the Church of Jesus Christ; that he has been faithful in his attendance at church services; and that he would recommend him as being sincere in his beliefs regarding the teachings of his church. Another reference who is a religious associate advised that he could only give registrant the highest recommendation as to being conscientious in his beliefs of the church.

fol. 114 The pastor of the Church of Jesus Christ said that registrant was raised in that church and is presently a member in good standing and faithfully attends services twice a week and takes part in them. She stated that the basic beliefs and history of the Church of Jesus Christ have been set forth in a booklet she has prepared and a copy of which has been furnished to the local board for inclusion in each registrant's file who is a member of the church. She is positive that registrant is sincere and conscientious in his beliefs.

Credit and crmainal records with respect to the registrant are negative. Registrant's parents maintain an excellent credit rating.

Prepared: April 22, 1957

fol. 117|



[fol. 118] GOVT'S EXHIBIT B. No. 24

ILLINOIS STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM
405 E. Washington Street
SPRINGFIELD, ILLINOIS

6 June 1960

[SEAL]

Please Refer to File
In Reply
FBW:gs

PARKER, Malcolm Lebert
11-177-37-5

Local Board No. 177
Selective Service System
County Court House
Sullivan, Illinois

Gentlemen:

The cover sheet of the above-named registrant has been reviewed and is returned herewith. Please acknowledge receipt by signing and returning the attached copy of this letter.

It is noted that the registrant was classified in Class I-A-O by the appeal board on 13 December 1957 by a vote of 3 to 0. He was subsequently ordered for physical examination and was found acceptable for service on 27 January 1960.

The registrant's classification was reopened and considered anew by the local board on 11 May 1960. The local board retained him in Class I-A-O, mailing SSS Form No. 110 to him on 12 May 1960. This action gave him the right to request another personal appearance before the local board and another appeal of his classification but no request for a personal appearance or an appeal was received by the local board.

In our opinion the case has been properly handled, the registrant has been granted all legal rights, and he should now be ordered for induction in his regular turn.

Sincerely yours,

FOR THE STATE DIRECTOR

/s/ F. B. Woodworth
F. B. WOODWORTH
Lt. Colonel, USAF
Deputy State Director

Enclosure

[fol. 119] GOVT'S EXHIBIT B, No. 26

IF YOU WEAR GLASSES, PLEASE BRING A COPY OF YOUR EYEGLASS PRESCRIPTION.

Approval Not Required

SELECTIVE SERVICE SYSTEM

ORDER TO REPORT FOR INDUCTION

LOCAL BOARD NO. 177
SELECTIVE SERVICE SYSTEM
[illegible] ILL.
(Local Board Stamp)

AUG 11 1950
(Date of mailing)

The President of the United States,

To MALCOLM (First name) LEIBERT (Middle name or initial) PARKER (Last name) 11 177 37 39 (Selective Service Number)

Mailing address R. R. #4, Elm Springs Park (Number and street or R. F. D. route)

Sullivan (City, town, or village) Moultrie (Zone) (County) Illinois (State)

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report

at West-side entrance to County Court House, Sullivan, Ill. Bus will be waiting to drive you (Place of reporting) to train at Mattoon where you will depart for Chicago. (Daylight S. Time)

at 7:15 (Hour of reporting) a.m., on the 14th (Day) of September (Month) 19 50,

for forwarding to an armed forces induction station.

GOVT'S EXHIBIT E No. 26

(Member or clerk of Local Board) (Mrs.) Helen P. Kenney, Clerk

IMPORTANT NOTICE

If you have had previous military service, bring your service records with you. If you wear glasses, bring them with you. Bring proof of your relationship of the person you claim as a dependent if you intend to apply for dependency benefits.

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted, return transportation will be provided.

Persons reporting to the induction station in some instances are found to have developed disqualifying defects since being examined and may be rejected for these or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly at the place specified above and at the hour and on the day named in this Order is a violation of the Universal Military Training and Service Act, as amended, and subjects the violator to fine and imprisonment. You must keep this form and bring it with you when you report for induction. Bring with you sufficient clothing for 5 days.

If you are so far away from your own Local Board that reporting in compliance with this Order will be a serious hardship and you desire to report to a Local Board in the area in which you are now located, go immediately to that Local Board and make written request for transfer of your delivery for induction, taking this Order with you.

SSS Form No. 252 (Revised 6-25-50) (Supplies of previous printings shall be used until exhausted) [illegible]

[fol. 120] GOVT'S EXHIBIT B, No. 28

ARMED FORCES INDUCTION STATION
615 West Van Buren Street
CHICAGO 7, ILLINOIS

15 September 1960

U. S. District Attorney
219 South Clark Street
Chicago, Illinois

Dear Sir:

In compliance with paragraph 40c(2), AR 601-270, Department of the Army dated 11 March 1960, the name and circumstances surrounding the refusal of MALCOLM LEBERT PARKER, RR #4, Elim Springs Park, Sullivan, Illinois, Selective Service Number 14 177 37 39, who refused to submit to induction into the Armed Forces of the United States is hereby submitted:

MALCOLM LEBERT PARKER, was ordered to report for induction into the Armed Forces of the United States on Wednesday 14 September 1960 by Selective Service, Local Board No. 177, whose address is County Court House, Sullivan, Illinois. Mr. Parker refused induction on the grounds that he is a "Conscientious Objector" and stated his religious belief "Harshmanite" will not permit him to be inducted. Mr. Parker was asked to make a signed statement in his own hand writing confirming his refusal to submit to induction which he declined to do. It was explained to the registrant that his refusal to submit to induction would constitute a felony under the provisions of Selective Service Regulations, and he was informed that a conviction of such a nature would subject him to punishment of either five (5) years of imprisonment and or a fine of not more than $10,000.00 or both. Capt Walter H. Schuttler, 1st Lt Ephraim J. Burrow, Arty and Sgt Stanley Wojnarowski, RA 16278740 were witnesses to the registrants refusal to submit to induction.

This matter is being referred to your office for the necessary action.

Very truly yours,

/s/ W. H. Schuttler
W. H. SCHUTTLER
Capt, AGC
Deputy CO for Induction

cc: State Director
Local Board

Sep. 16, 8:58 AM, '60
United States Attorney
Northern District
Chicago, Illinois

☆ U. S. GOVERNMENT PRINTING OFFICE 1963 674291 674

Office Supreme Court, U.S.
FILED
OCT 15 1962
JOHN F. DAVIS, CLERK

No. 516

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

MALCOLM LEBERT PARKER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FRANCIS HEISLER
MARK L. SCHWARTZMAN
7 South Dearborn Street
Chicago 3, Illinois
Attorneys for Petitioner

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IN THE

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OCTOBER TERM, A. D. 1962.

No.

MALCOLM LEBERT PARKER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To The Honorable, The Chief Justice and Associate Justices of The Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit, which court affirmed the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, (Honorable Julius J. Hoffman, District Judge) which judgment, after a verdict of the jury finding Petitioner guilty of violation of the Universal Military Training and Service Act (Sec. 462, Title 50, App. U.S.C.), sentenced him into the custody of the Attorney General of the United States for a period of two years and fined him the sum of One Thousand Dollars plus costs of the proceedings.

OPINION BELOW.

The opinion of the Court of Appeals of August 20, 1962, No. 13585, of the September term, 1961, April session 1962, of that Court, is not yet reported. It appears as Appendix A attached to this petition.

JURISDICTION.

The judgment and commitment of the trial court was entered on the 26th day of September, 1961 (18 U.S.C. 3231; 62 Stat. 826), the opinion of the United States Court of Appeals for the Seventh Circuit affirmed the judgment of the District Court (28 U.S.C. 1291; 72 Stat. 348). A petition for rehearing was filed within the time set forth by the Rules and this was denied by the United States Court of Appeals on the 14th day of September, 1962. This petition for a Writ of Certiorari is timely filed.

The statutory provision, believed to confer jurisdiction on this Court to review the judgment by a Writ of Certiorari, is 28 U.S.C. 1254 (1); 62 Stat. 928.

QUESTIONS PRESENTED.

I.

While there are subsidiary questions which the petitioner hopes this Court will decide, there is one main issue and that is: When the local board indicates on the record that the petitioner under the Selective Service Act is sincere and honest in his contention that he objects to combatant as well as to non-combatant service because of his religious training and belief, nevertheless exempts him only from combatant service and the appeal board does likewise, does the employment of petitioner by a candy

factory as a laborer, a small part of the products of which is purchased by the armed forces, present a *basis in fact* for the board's denial of petitioner's full exemption from service?

II.

We read this Court's decision in *Dickinson* v. *United States*, 346 U.S. 389; 74 S.Ct. 152, as holding that when a draftee establishes *prima facie* that he is entitled to the exemption claimed, the record must disclose matters "incompatible" with the *prima facie* case otherwise there is no *basis in fact* for the denial of the classification claimed. Does the holding in the *Dickinson* case apply, as the Court of Appeals for the Seventh Circuit held, only to cases "which involved ministerial status," or to a conscientious objector as the petitioner is here?

III.

The Local Board here went on record in acknowledging petitioner's sincerity in his claim for full exemption based on religious training and belief.

The Local Board nevertheless refused him 1-O classification because,—as it stated,—to do so would have required another young man to take petitioner's place to fill the local quota and since the Local Board considers such an event unfair, therefore, it does not give 1-O classification to anyone. Can such an illegal conduct of the Local Board be overcome by the Appeal Board's classification *de novo* (resulting in the same denial) in face of petitioner's claim of lack of due process?

IV.

When the government is permitted to put into evidence, based on gossip, unsupported, mainly hearsay matter, that the employing company sometime, somewhere manufactured implements of war, but petitioner was prevented by the trial court to present evidence to the contrary, does such evidence presented by the government constitute *basis in fact* to support the Local and Appeal Boards' action denying petitioner's claim for exemption which claim was supported by his evidence *prima facie?*

V.

The government in this case introduced into evidence the Selective Service file of petitioner. The trial court precluded him to question the validity and truthfulness of the content of some of those documents. Was there a prejudicial error in such denial of petitioner's right to examine, and offer evidence as to such documents and was it further a prejudicial error when the trial court permitted the jury to take with it the Selective Service file or was there no prejudice as the Court of Appeals held "since the jury had already heard oral testimony of the substance of its (Selective Service) contents."

VI.

The Selective Service file introduced by the government included the recommendation of the Department of Justice addressed to the Appeal Board. This recommendation referred to the Hearing Officer's report to the Department. Petitioner challenged the truthfulness of the recommendation as far as it referred to the Hearing Officer's report. His request to the Court to order the production of the Hearing Officer's report was denied by

the Trial Court. Was this a prejudicial error contrary to the holding of the Court of Appeals?

STATUTES AND REGULATIONS

(Because of the length they appear more conveniently in Appendix B hereto attached.)

1. 50 U.S.C. 462 (62 Stat. 622).
2. Rule 1622.1 of Selective Service Regulations.
3. Rule 1622.2 of Selective Service Regulations.
4. Rule 1622.11 of Selective Service Regulations.
5. Rule 1622.14 of Selective Service Regulations.
6. Rule 1622.16 of Selective Service Regulations.
7. Rule 1626.25 of Selective Service Regulations.

STATEMENT OF THE CASE.

Petitioner was indicted for having violated Sec. 462, Title 50, App. U.S.C. (Universal Military Service and Training Act) and was charged with having refused to obey an order of induction issued from his local Selective Service Board 177 in Sullivan, Illinois. He pleaded not guilty and the case was tried before a jury. Evidence was heard and the jury found him guilty as charged and the Trial Court's judgment was that he be committed to the custody of the Attorney General for a period of two years and that he pay a fine of One Thousand Dollars and the cost of prosecution (page 66 of the Appendix in the Appeal filed before the United States Court of Appeals for the Seventh Circuit hereinafter referred to as (Ap. p. 66)). Petitioner appealed from the judgment to the United States Court of Appeals for the Seventh Circuit on various grounds and the Court of Appeals affirmed the judgment of the Trial Court (Appendix A).

Before the jury the government identified and offered into evidence petitioner's Selective Service file. To many of those documents the petitioner objected and particularly to Exhibit B-16 on the ground that it refers to "the information given by the registrant to Mr. F. M. Brittingham, a Hearing Officer of the Department of Justice", while there was no report nor even a fair résumé of such Hearing Officer's report in the file (Ap. 10). The Selective Service file was admitted into evidence (Ap. 8).

The petitioner moved that the government be ordered to produce the Hearing Officer's report, but the Trial Court refused to hear the motion to produce (Ap. 10). The same motion was renewed, however, it was denied (Ap. 10).

Evidence was presented that petitioner on September 14, 1960, appeared at the Chicago Induction Center; that he was asked to take a step forward indicating his entering into the armed forces, but he remained standing and thus refused to be inducted (Ap. 12-13).

The government rested and outside of the hearing of the jury it argued that the full Selective Service file discloses a *basis in fact* for petitioner's 1-A-O classification. The Trial Court found that there is a *basis in fact* to support the classification given to petitioner. The defense motion for a judgment of acquittal at the close of the government's evidence was denied (Ap. 18).

The defense called Felix Hagerman, the assistant pastor of the Church of Jesus Christ of Sullivan, Illinois, who is also an officer of Community Industries, Ltd. which company employs petitioner (Ap. 20).

This witness testified that the Church of Jesus Christ of which the petitioner is a member, is not a manufac-

turing organization. It never was; and that the Community Industries Ltd. is an Illinois corporation owned by its stockholders and it is not owned by the church and that the company has never manufactured ammunition or war goods (Ap. 20-21). He also testified that petitioner is employed by the company doing shipping and packaging in the candy division. He has no managerial rights. He is an hourly paid employee (Ap. 21); that he is a good member of the church and was for a number of years; and that he followed the tenets of the church (Ap. 21).

There are three divisions in the company; one manufactures garden machinery, another, dresses and the third, candy (Ap. 21). Upon the Court's inquiry, this witness stated that the dress division in times past, manufactured tents for the government and that in recent years some of the candy was sold to government sources (Ap. 22).

Upon further inquiry, by the Trial Court, the witness stated that in the last fifteen years, while he was employed by the company, it never manufactured any kind of valves used on naval vessels, and further, that he knows that the company never made any naval equipment (Ap. 20-22). This witness stated that upon the request of defense counsel he checked the records of the company and he found that during World War II the garden tractor division, which operated as a machine shop at that time, did work for the Crane Company of Chicago and did some machining on valves. Where these valves were used he did not know (Ap. 22-23).

Contrary to the statement in Exhibit B-17 to the effect that "Community Industries does not manufacture munitions in the ordinary sense of the word" the witness stated that the company did not manufacture munitions

in any sense of the word. This witness was not permitted to testify whether he heard any member of the Local Board in Sullivan, Illinois say that no one in the jurisdiction of that Board does or will receive a classification of 1-O. He was not permitted to testify even though an exhibit introduced by the government contained just that statement. The objection of the government, based on the argument that this Exhibit, introduced by it was hearsay, was sustained by the Trial Court (Ap. 24). Defense attorney was instructed by the Court not to inquire into the tenets of the church because "the defendant's position with respect to the tenets of the church were contained in his file. The jury will have that file to look at when they deliberate on their verdict" (Ap. 25).

The government moved and the motion was sustained that witness Hagerman's testimony should be stricken in its entirety except with reference to the reputation of petitioner. The jury was so instructed. (Ap. 26).

Petitioner offered proof that if witness Hagerman would have been permitted to testify he would have stated that the Church of Jesus Christ to which petitioner belongs, was never, and is not now, directly or indirectly engaged in the manufacture of any war goods; that he knows that the petitioner was denied a classification of 1-O because of the bias, prejudice and caprice of the Draft Board. He bases his statement on the fact that he heard a member of the Drat Board stating that no one in the country where Sullivan is located receives a 1-O classification for the reasons that when one gets a 1-O classification another boy has to take his place to satisfy the quota; that it is not fair that one should be compelled to go into service when "others solely because of religious training and beliefs are exempted from

doing so"; and further, because one Board member's son who also believes in the teachings of Jesus Christ went into military service (Ap. 27-28).

The witness said the statement of the Department of Justice in Exhibit B-16, that the minister of the church declared that the members were willing to manufacture anything in wartime for the government was not true. To the contrary, the minister stated that the church members are abiding by all laws except those which compel them to act against their consciences and against the commands of the Lord. The witness also stated, in his offer of proof, that he believes that the members of the church would refuse to manufacture any war material that is used for destructive purposes. The offer was objected to by the government and the objection was sustained (Ap. 28-29).

Petitioner himself testified that he is 24, lives in Sullivan, Illinois, married and works in the candy factory packaging candy bars and he is also a receiving clerk. He has nothing to do with the sale or contracting of merchandise (Ap. 37). He has worked there for eight years. He was born in Sullivan and raised in the Church of Jesus Christ of which he is a member as are his parents. He finished grade school and two years of high school (Ap. 39).

In accordance with the teachings of his church, he does not smoke or drink and does not use force even in self defense. That he believes in the command "return good for evil, and to love thy enemies and try to do them good." This statement by the witness was objected to by the government and it was stricken (Ap. 32). The government objected to the question whether the peti-

tioner believes in a Supreme Being, and the Court sustained the objection on the ground that this matter is answered in the Selective Service file, and that "the jury will see all of these documents. I intend to send them to the jury room for their examination." (Ap. 32).

Defense counsel's questions whether petitioner appeared before the Hearing Officer; what was the name of such officer; did he say to this officer that his objection to military service is bottomed on the command "Thou shalt not kill"; did he explain to the officer whether the company which employs him manufactures munitions or not; did he say anything to the Hearing Officer about any kind of valves manufactured by the company were objected to by the government and objections were sustained (Ap. 33).

The question whether the Hearing Officer stated to the petitioner that he will recommend for him a classification of 1-O was objected to by the government and the objection was sustained (Ap. 34).

The questions whether petitioner was ever connected with any company during his eight years employment that manufactures any war material; whether he personally ever manufactured war material; whether he would manufacture war material were objected to by government and objections were sustained (Ap. 34).

The question whether one of the Draft Board members made the statement contained in Exhibit B-12 as to reasons why he cannot be given 1-O classification was objected to and the objection was sustained (Ap. 35).

Objections were made and sustained to the questions whether he made the statement before the Hearing Officer, attributed to him by Exhibit B-16; whether he adheres to the belief set forth in Exhibit 7; whether he still

stands by and accepts the tenets which preclude him from producing willingly anything that causes death; as to the character of the church to which he belongs (Ap. 35-38).

Petitioner testified that he did not take the step forward at the Induction Center, however, the following questions were objected to and objections sustained: Why he did not take the step forward; did he find himself confronted with a conflict between the law of the Lord, and the law given by man; whether he knew at that time of a law of the United States which provides that no person has to subject himself to military service who was conscientiously opposed to such service; whether he believed that at that time that he was entitled to 1-O classification (Ap. 39). The question whether petitioner, when he remained standing at the Induction Center intended to violate the law was objected to and objection sustained. (Ap. 39-40).

Petitioner then made an offer of proof as to the answers that he would have given to the questions objected to and which objections were sustained. This offer was objected to and the objection sustained (Ap. 40-43).

His offer stated that he truthfully claimed 1-O classification in Exhibit B-1 because of his religious training and belief; that he knew the punishment for false statement in such exhibits. That he knew of Sec. 6 (j) of the Universal Military Training and Service Act and he would have been willing to perform civilian work contributing to the national welfare for a period of 24 months in lieu of induction; that he believes in a Supreme Being; that he acquired his religious training and beliefs from the church to which he belongs; he believes in using force only if a person involved is insane and the use of force is helpful to him

otherwise he does not believe even in self defense; he does not partake in anything that has evil thought behind it; he opposes participation in war in any form because of the command "return good for evil, love thy enemies and try to do them good." That he lives his life in accordance with the Bible and his understanding of it; he cannot fight against his enemies and do them good at the same time, and therefore, his conscience does not permit him to be a member of the armed forces even as a noncombatant; any organization, the main purpose of which is fighting is contrary to God's command which forbids retaliation because even evil must be overcome with good; that in case of a conflict which requires a choice between the law of love and man made law he must choose the former; that contrary to Exhibit B-16, he did not say to the Hearing Officer that his opposition to military service is based on the Old Testament command against killing but rather on the New Testament command of love including one's enemies; that contrary to Exhibit B-16 he stated to the Hearing Officer that the church to which he belongs never manufactured anything and that Community Industries which employs him never manufactured munitions in any sense; it manufactures only items for civilian consumption though some of the products may have been bought by the government; that he did not say, because he did not know anything about a valve being manufactured by his company for naval vessels; he did not say that "it would not be considered immoral or a violation of their (church members) Christian duty to manufacture ammunition"; he did not say to the Hearing Officer or to anyone else that "reluctance to manufacture munitions is not a matter of religious belief but merely a matter of preference"; to the contrary, he stated that he would not willingly engage in the manufacture of any articles used to cause

death because that would be repugnant to his principles and religious mission in this world; that he did not take the step forward at the Induction Center, not because he intended to violate any law, but because taking that step would have been contrary to his conscience; that when he failed to take the step forward he knew of the law which provides that a person who is conscientiously opposed, because of his religious training and belief, to both combatant and noncombatant service cannot be ordered to perform such service; that he knew of the alternative service and he was willing to do civilian work as required by law; he knew that he had the right not to take the step forward and thus to test whether his Draft and Appeals Boards which ordered him into noncombatant service, notwithstanding of his past claim to exemption, thereby violated the law. The government objected to the offer and the objection was sustained (Ap. 40-47).

Various witnesses testified to petitioner's good reputation (Ap. 49-50). After petitioner's case was concluded he presented a motion for a judgment of acquittal. The motion was denied (Ap. 50).

Petitioner submitted instructions embodying Sec. 6 (j) of the Act, also on the matter of bias and prejudice. Those instructions were refused (Ap. 51-52).

The jury found the defendant guilty as charged in the indictment. The court ordered that the judgment of conviction be entered on the verdict (Ap. 52-63).

The petitioner moved for a new trial on the ground that the verdict is contrary to the law and the evidence. Motion denied (Ap. 63-64).

Petitioner having been given an opportunity to speak on his own behalf was committed into the custody of the

Attorney General for a period of two years, was fined One Thousand Dollars and cost of prosecution and that he stand committed until the fine and costs are paid. He was permitted to remain on bail in the amount of Five Thousand Dollars pending appeal (Ap. 64-66). The petitioner's motion that the sentence be entered under Section 4208 of the Rules of Criminal Procedure was denied with the remark that the Court "is not now disposed to bargain with this defendant." (Ap. 64-65).

REASONS FOR ALLOWANCE OF THE WRIT AND ARGUMENT AMPLIFYING SAME.

1.) Petitioner submits that this case raises important questions as to the case law as well as the interpretation of the governing rules of administrative agencies as the Boards of Selective Service which questions ought to be settled by this Court. We submit that at least one of the important and pertinent cases decided by this Court, *i.e.* the *Dickinson* case, which we understood as clearly settling the issues therein involved, was misread by the Court of Appeals for the Seventh Circuit since it put a greatly and, we say, prejudicially restrictive interpretation thereon and therefore, this Court ought clarify the issue. There are other questions which have been decided by the various Circuit Courts of Appeals, but the instant decision of the Circuit Court of Appeals for the Seventh Circuit is in conflict not only with certain decisions of this Court and of other Circuit Courts, but it also conflicts with a prior case decided by the Seventh Circuit.

2.) This Court never decided the important question which undoubtedly underlies the denial of petitioner's claim to exemption both from combatant and noncombatant service. This question is if a registrant, as petitioner, is found by the Selective Service Boards to be sincere and

honest, and that his claim is based on religious training and belief, and if he is employed in a candy factory as an hourly paid employee having no managerial rights, which factory sells a part of its product to the government, does that fact satisfy this Court's requirement as to basis in fact for the denial of the *prima facie* established case for full exemption from military service?

3.) This Court never decided whether the so-called *de novo* classification by the Appeal Board which retained petitioner in the classification given to him by the Local Board satisfied the rule that the draftee is entitled to fair play on every step of the processing when the record discloses that the Local Board illegally denied petitioner's claim that was established *prima facie*.

4.) Is it sufficient for the government to conjure up a basis in fact by presenting unfounded evidence as to the frame of mind of petitioner and particularly is that sufficient when the defendant is denied the right to present evidence contrary to that presented by the government?

5.) Is it prejudicial error for the government to offer before a jury and for its perusal petitioner's Selective Service file, and then for the Trial Court to refuse permission to him to question some of the documents in the file, and to refuse permission to him to present evidence contrary to some of the documents in the file?

6.) Was it prejudicial error on the part of the Trial Court to refuse petitioner's request for an order upon the government to produce the report of the Hearing Officer to the Department of Justice when petitioner challenged the truthfulness of the Recommendation of the Department of Justice to the Appeal Board as far as it referred to the report of the Hearing Officer, no part of which report was before that Board or the Court?

ARGUMENT.

I.

THIS COURT'S HOLDING IN THE DICKINSON CASE TO THE EFFECT THAT THE PRIMA FACIE CASE MAY NOT BE DISREGARDED BY THE BOARD UNLESS THE RECORD DISCLOSES A BASIS IN FACT THAT IS CONTRARY TO THE REGISTRANT'S CLAIM. THIS HOLDING IS MISINTERPRETED BY THE COURT OF APPEALS.

The Court of Appeals in its opinion states that (pp. 3-4)

> "Parker relies on *United States* v. *Dickinson*, 346 U.S. 389 (1953) to set aside the classification. The Appeal Board's decision on the basis of a registrant's file, giving 'consideration' to the recommendation of the Department of Justice, is usually the final determination of the Selective Service System. *Witmer* v. *United States*, 348 U.S. 375, 377 (1955). In that case, the court interpreted *Dickinson* to hold that there was no basis in fact for the classification because there was no evidence, 'incompatible with' Dickinson's proof, to rebut his prima facie case, made out by objective facts. That distinguished Witmer's case from Dickinson's, and distinguishes Parker's. 'In *Witmer* and here, the question cannot be determined on objective facts such as Dickinson's which involved a ministerial status. Once Dickinson's status was determined prima facie, the Government was required to produce a basis in fact on which the court could decide his claims were not as stated. In Parker's case the question is whether there is affirmative evidence produced by the Government that he has not 'painted a complete or accurate picture.' *Witmer* v. *United States*, 348 U.S. 375, 382 (1955)."

As we read the above, the Court of Appeals held that in the *Dickinson* case there was no evidence "incompatible

with" Dickinson's proof to rebut his prima facie case made out by objective facts, but that teaching doesn't apply to petitioner. Why not, because petitioner's claim "cannot be determined on objective facts such as Dickinson's which involve the ministerial status." In petitioner's case the Court of Appeals held that that ruling does not apply because of the assumption that the government produced evidence that petitioner did not paint a complete and accurate picture. As we have shown before, there is no evidence whatsoever that the petitioner did not paint either a complete or accurate picture unless a story made of half gossip, half rumors with a dash of assumption and a twist of presumption, is evidence.

The Court of Appeals further states (p. 4) that when the record discloses any evidence of whatever nature which is incompatible with the claim of exemption "courts may not inquire further as to the correctness of the board's order. *United States* v. *Simmons*, (7 Cir.), 213 F.2d 901, 904 (1954), reversed, other grounds, 348 U.S. 397 (1955)."

We respectfully submit that this court in the *Simmons* case talked about true evidence, legal evidence and not about anything that maybe, *albeit* incorrectly, described as evidence. We believe that this court did not hold in that case, or in any other case, that it is sufficient for the government to present a letter from the Department of Justice directed to the Appeal Board and accept the statements therein as evidence even though petitioner challenged the veracity of many of those statements.

We do not believe that this court held in the *Dickinson* case that its teaching applies only to ministerial claim, for the reason that such a claim can be measured by objective evaluation. We believe that the holding of the *Dickinson* case applies to petitioner here even though his subjective

claim may have to be scrutinized by more exacting tools than objective yardsticks. We believe that this court will agree with us that the claim of a conscientious objector can be tested for sincerity, truthfulness, honesty and integrity. It was done so by the Local Board which believed in his sincerity. It was so tested by the Hearing Officer who saw him face to face and found his sincerity not wanting.

Petitioner submits that in accordance with the teachings of the *Dickinson*, *Sicurella* and *Simmons* cases and under the circumstances disclosed by the record here, there is no basis in fact for the Board's denial of his claim for full exemption from military service and therefore, a writ of certiorari ought to issue and the judgment ought to be reviewed.

II.

THE EMPLOYMENT OF PETITIONER AS NON-MANAGERIAL WORKER IN THE CANDY FACTORY, A SMALL PART OF WHICH CANDY IS PURCHASED BY THE GOVERNMENT IS NO BASIS IN FACT TO DENY HIS CLAIM TO EXEMPTION.

Exhibit B-16, introduced by the government, contains *inter alia* "The Hearing Officer was impressed by the truthful and frank attitude of the registrant during the course of the hearing. He concluded that there is no doubt that the registrant is a sincere and conscientious member of his denomination. . . ."

Government's Exhibit B-18 shows that the Local Board which had an opportunity to see petitioner face to face questioned not for a moment that he is sincere and honest. The Board believed that he is a good member of the church. Nevertheless, the Local Board and the Appeal Board refused to grant him the 1-O classification that he asked for,

and which he maintained he was entitled to because of his religious training and belief, and because of the exemplary life that he led according to such belief.

Searching the record, we are unable to find anything therein which in any sense was incompatible with his claim for exemption.

The opinion of the Court of Appeals (page 3) clearly indicates that that Court found a basis in fact in petitioner's employment by Community Industries. That Court says:

> "The Department of Justice hearing officer on Parker's appeal to the Appeal Board found that Parker worked for Community Industries, a Harshmanite enterprise, which produced WAC uniforms, candy for army rations, valves used on naval vessels, and other items usable in war, that Parker did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker view the Harshmanite 'reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference;' and that Parker subscribed to the beliefs and opinions of the Harshmanites."

While the above holding of the Court of Appeals points to the only possible basis in fact, we submit, as we did in our Petition for Rehearing, that the same is studded by misstatements. One of the misstatements results from the fact that the court can not know what the Hearing Officer found because as we will show hereafter, the Trial Court refused to order the Hearing Officer's report into the Court even though petitioner challenged that part of the of the Department of Justice's Recommendation to the Appeal Board (R-16) that referred to the Hearing Officer. As the record discloses and as the summary of the case indicates the Community Industries which employed peti-

tioner is *not a Harshmanite enterprise*, whatever that may mean, but rather it is an Illinois corporation, owned by the stockholders. There is another misstatement; since there is not one iota of evidence that Community Industries produced WAC uniforms, the only reference to that is in the Department of Justice's recommendation (B-16). The only evidence as to any kind of manufactured goods purchased by the government from the dress division of the company is the testimony of witness Hagerman (Ap. 22), that the dress division in times past manufactured tents for the government. There is not an iota of evidence except the ex parte statement in the Department of Justice's recommendation that the company ever manufactured candy for army rations. The only evidence with reference to candy is contained in witness Hagerman's testimony to the effect that in recent years some of the candy was sold to government sources. (Ap. 22).

There is a statement in the Court of Appeals opinion above quoted to the effect that Community Industries produced "valves used on naval vessels and other items usable in war." There is not an iota of evidence justifying that statement unless this Court is willing to accept the *ex parte* statement of the Department of Justice (B-16) which was challenged by the petitioner as to its veracity and factualness. The only evidence found as to those valves used on naval vessels seems to show that those valves were made out of whole cloth because witness Hagerman testified that in the last 15 years while he was employed by the company, it never manufactured any kind of valves used on naval vessels and further that he knows that the company never made any naval equipment (Ap. 22). This witness also testified that he did, upon the request of defense counsel, check the records of the company and the only thing that he could find was that during World

War II the third division of the company which is now manufacturing garden tractors was operating as a machine shop and at that time he did work for the Crane Company of Chicago on machining some valves. However, the witness did not know where the valves were used (Ap. 20-23).

The Court of Appeals opinion also held that Community Industries were manufacturing "other items usable in war." Petitioner respectfully submits that no such items were manufactured as far as the record discloses and if there were any manufacturing done of such items it was done by the Department of Justice in its *ex parte* recommendation, B-16, and by the Court of Appeals accepting such *ex parte* statement as the gospel truth, even though Petitioner categorically denied its truthfulness.

The Court of Appeals found that petitioner "did not consider it immoral or a violation of his Christian duty to manufacture ammunition." This statement is based not on the record other than B-16, *i.e.* a contradicted statement of the Department of Justice. The record is to the contrary because the defense witness, the assistant pastor of the Church of Jesus Christ, who is also an executive of the Community Industries, stated that "The company did not manufacture munitions in any sense of the word." (Ap. 24). This testimony was stricken on the government's motion (Ap. 26) but the offer of proof which was similarly rejected by the Trial Court shows that this witness from his own knowledge could and did state that "The church members were abiding by all laws except those which compel them to act against their own conscience and against commands of the Lord." The witness offered as his belief that "The members of the church would refuse to manufacture any war material that is used for destructive purposes."

Petitioner himself testified as to this point contrary to the holdings of the Court of Appeals and he denied that he ever said anything to the Hearing Officer about his company manufacturing any kind of valves. He was not permitted to answer pertinent questions but his offer of proof which was rejected by the Trial Court shows as to this point, that the company employing him "never manufactured munitions in any sense. It manufactures only items for civilian consumption though some of the products may have been bought by the government."

The Court of Appeals opinion above quoted contains a sentence in quotation marks which says that petitioner considered the members of his church "reluctant to manufacture munitions * * * not (as) a matter of religious belief, but merely a matter of preference"; then the Court goes on to say that petitioner subscribed to the beliefs and opinions of the Harshmanites. The quoted sentence has its source in the recommendation of the Department of Justice repeatedly challenged by petitioner as to its truthfulness and it does not come from any other part of the record. The record shows that he denied ever making the statement to the Hearing Officer. "It would not be considered immoral or a violation of their Christian duty to manufacture ammunition." He denied making the statement to the Hearing Officer and in fact, to anyone else that "reluctance to manufacture munitions is not a matter of religious belief, but merely a matter of preference." Petitioner in his offer of proof stated that he would not willingly engage in the manufacture of any articles used to cause death because that would be repugnant to his principles and religious mission in this world. (Ap. 40-47).

Having stripped the above quotation from the Court of Appeals opinion of all erroneous statements, what is

left there is the fact admitted by the petitioner that he was working for the past 8 years for Community Industries, Ltd., an Illinois corporation, in its candy division. That he was employed as packer, shipper and receiving clerk on hourly wages and having no managerial function whatever; that he has no connection with the sale of these products to any of the customers. He also admitted that some of the candy manufactured by his company may have been sold to the government.

The petitioner submits that his employment as a civilian doing the innocuous work of wrapping, shipping and receiving candy cannot be and ought not to be considered a basis in fact for the Board's denial of his *prima facie* established case for 1-O classification. It cannot be considered basis in fact even if it is admitted that some of the candy was purchased by the government.

We do not believe that this Court will consider petitioner's employment as a little candy maker a basis in fact to deny his classification because it was said by this Court that a draftee's willingness to fight at Armageddon does not indicate his willingness to participate in war because

> ". . . Congress had in mind real shooting wars when it referred to participation in war in any form—actual military conflicts between nations of the earth in our time—wars with bombs and bullets, tanks, planes and rockets. We believe the reasoning of the Government in denying petitioner's claim is so far removed from any possible congressional intent that it is erroneous as a matter of law." *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403, 406.

The government's own evidence, Exhibit B-16, that being the *ex parte* recommendation of the Department of

Justice to the Appeal Board shows that the members of the Church of Jesus Christ as petitioner here, are "strangers in the land of Sullivan" and as such strangers and because of economic determinism they must find work which permits them to live and labor in accordance with their beliefs. The Community Industries gives them that possibility. To deprive petitioner of his prima facie established claim to exemption from full military service because he is so employed would be tantamount to say to him that he has to choose between not earning his livelihood or forfeiting his right to follow his conscience.

The Court of Appeals for the Seventh Circuit decided the case of *United States* v. *Wilson*, 215 F2d. 443. In that case, the Court held that, they do not think,

> "The defendant's employment as a railroad telegraph operator was in any way inconsistent with his claim to exemption as a conscientious objector."

That Court did not so hold because,

> "It would be wholly unrealistic to construe this (Sec. 6 (j)) language to mean that a person whose civilian employment indirectly contributed to the war effort could not, therefore meet the statutory test for exemption."

That Court found it difficult to conceive,

> "of gainful activity which, in periods of extensive mobilization and training, would not in some manner aid the common purpose. Moreover, the act expressly recognizes that one may engage in civilian work contributing to the national welfare without losing the right to be classified as a conscientious objector."

The pastor of the church wrote to petitioner's Draft Board and the writing was introduced by the govern-

ment as Exhibit B-3. The pastor's statement, we submit, sums up the problem because:

> "If it is wrong to produce anything which is helpful to the government in time of war, then it is wrong to engage in farming at such a time. In fact, logic would force one at such a time to refuse to engage in any constructive effort . . ."

Petitioner submits that this Court should declare that his and other innocuous employments, even though helpful to the government, is not basis in fact to refuse full conscientious objector classification to one who prima facie established that he is entitled to it.

III.

LACK OF DUE PROCESS AND FAIRNESS AT ANY STEP OF THE SELECTIVE SERVICE PROCESSING WILL CARRY OVER AND WILL TAINT THE WHOLE PROCEEDINGS.

Petitioner claimed in the Trial Court as well as before the Court of Appeals that the Local Board while admitting his sincerity and the justification of his claim for full conscientious objector classification based on his religious training and belief nevertheless, illegally denied him such classification. He submitted that pursuant to Exhibit B-12 introduced into evidence by the government he recapitulated the transaction before the Local Board as it transpired a day before. He recalled in this document which was never contradicted by any evidence that when the Board denied him 1-O classification there was an inquiry as to reasons of such denial. One of the Board members said:

> "They would not give a 1-O classification to anyone at the present time for he did not think it was right for another boy to have to go into the service for a

> boy who did not believe in going into the army or noncombatant service on account of religious belief. He felt that 1-A-O classification was for conscientious objectors." (Ap. 35, 44-45)

Petitioner submitted that such a reasoning by a Draft Board member clearly indicates that the denial of the 1-O classification was not based either on law or on the rules of the Board. The Court of Appeals on that point found as follows (p. 5):

> "The Local Board clerk testified that the Board 'felt they were doing their best to acknowledge the registrant's religion * * *' and thus, according to Parker, showed that emotion rather than the law permeated the Local Board proceeding. The only relevant issue before us in this case is the classification of the Appeal Board in its independent, de novo proceeding. This proceeding superseded the Local Board's hearing because there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board. *United States* v. *Van Hook*, 7 Cir., 284 F.2d. 489, reversed and remanded for resentencing, 365 U.S. 609 (1961)"

Petitioner knows that the Appeal Board classification superseded the Local Board's hearing but he respectfully disagrees with the Court of Appeals that "there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board." To the contrary, he submits they denied his claim to 1-O classification on some extraordinary non-legal grounds. The Appeal Board did not see him, did not talk to him, nevertheless upon the review of the files left him in the same classification as given to him by the Local Board. Petitioner presents as his presumption that the clearly expressed bias and prejudice of the Local Board carried over to and was adopted by the Appeal Board and the

hearing before the latter Board was not *de novo*, but was a sham and nothing more.

Further the petitioner says that there is another presumption and that is that the recommendation of the Department of Justice containing a great many untruthful statements as he and his witnesses offered to testify, did influence the Appeal Board to his great prejudice. He doesn't believe that this court will permit the judgment to stand when the same is bottomed not on evidence but rather on guess, since there is no denial of bias and prejudice somewhere along the way. It is but speculation and guess work that the bias "may not" prejudice him at all. To permit the judgment to stand would be equivalent to guess petitioner into the penitentiary.

IV.

BASIS IN FACT IS SOMETHING PALPABLE AND MUST BE TENABLE AND CONJECTURES AND PRESUMPTIONS ARE NOT SUFFICIENT.

The Court of Appeals in its opinion (p. 4) wrote that:

> "Parker also relies upon *Batterton* v. *United States*, 8 Cir., 260 F.2d 233 (1958), which is not in his favor on the facts before us. And each case must 'of necessity be based on the particular beliefs of the individual.' *Sicurella* v. *United States*, 348 U.S. 385, 390 (1955). The court there said the record 'does not even by indirection,' deny Sicurella's sincere religious beliefs. Parker argues the record here as to him is like that record as to Sicurella. But Sicurella's sincerity was admitted and the court said 'we are therefore relieved of the task of searching the record for basis in fact to support a finding of insincerity.' p. 388."

At this point the statement stops though one may presume that the juxtaposition intended to indicate that while

Sicurella's sincerity was admitted Parker's was not. As we pointed out heretofore, this is a total misreading of the record because his sincerity was admitted by the Local Board and by the Hearing Officer, (that is in those instances where he had a personal appearance) and this finding of sincerity was not challenged at any other instance. We believe that petitioner's sincere religious beliefs were not denied "not even by indirection"* just as in the *Sicurella* case. However, the Court of Appeals goes on to say that "The Department of Justice recommendation disclosed Parker's view that it would not be considered immoral or a violation of their Christian duty to manufacture ammunition * * * . . .' This fact would suffice to rebut Parker's prima facie showing." The statement that in his view he, as a Christian could engage in the manufacture of ammunition, which statement the petitioner submits is false, is cited by the Court of Appeals twice (pp. 3-4). The Petitioner submits that the Court of Appeals accepts the statement contained in the Department of Justice's recommendation as a *fact* even though petitioner and his witnesses repeatedly challenged the truthfulness of these statements. He repeatedly denied the so-called facts to be facts and did show as the record discloses that they are the result of someone's dreams if not of his nightmares.

Petitioner submits that the Court of Appeals "instead of chasing these rabbits'" which it designated as facts, should have inquired why the true facts were not permitted by the Trial Court to be disclosed when the petitioner challenged the Department of Justice's recommendation and in support of his challenge he asked for an order to produce the Hearing Officer's report (to which matter we shall return later). Here, however, petitioner

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* As was said by Justice Clark in his concurring opinion, **Baker v. Carr**, 82 S.Ct. 691 (1962) p. 732.

submits that it was error and prejudicial at that, for the Trial Court to exclude the testimony of witness Hagerman and the offer of proof made on his behalf and so was it prejudicial error to exclude petitioner's own testimony and his offer of proof because such proposed testimony denied the allegation to be fact, notwithstanding the Court of Appeals calling it fact. Petitioner also submits that prejudice resulted from the Trial Court's precluding him from presenting testimony on this count is shown because thereby the Court of Appeals was misled to accept non-facts as facts. (Ap. 26, 28-29, 33-43). Because of the unsubstantial and unsubstantiated evidence of the government attempting to overcome petitioner's prima facie case this court ought to grant a certiorari and ought to review the case.

V.

THE SUBMISSION OF THE SELECTIVE SERVICE FILE TO THE JURY WAS PREJUDICIAL TO PETITIONER AND SO WAS THE TRIAL COURT'S RULING PRECLUDING HIM FROM QUESTIONING SOME OF THE DOCUMENTS IN THE FILE.

The Court of Appeals in its opinion (p. 6) held that the Trial Court,

> ". . . erred in permitting the S.S.S. file to go to the jury, for, as the court in *Cox* said, " " " nothing in the file is pertinent to any issue proper for jury consideration." But we see no prejudice from this fact since the jury had already heard oral testimony of the substance of its contents."

Petitioner is hard put and he finds it next to impossible to follow the Court of Appeals' reasoning that while it was error to have the Selective Service file sent to the jury, that there was no prejudice "since the jury had

already heard oral testimony of the substance of its contents."

Petitioner complained before and does now exactly on this point since he knows that the jury heard oral testimony as to the file; the jury was permitted to "peruse" the whole of the file while he was not permitted to question any of the documents therein. (Ap. 8, 10).

Petitioner objected and now objects because the jury heard orally about the Department of Justice recommendation (Exhibit B-16) but he was not permitted to show that this recommendation contained many misstatements, falsehoods, particularly with reference to what petitioner said to the Hearing Officer and what the Hearing Officer said to him. (Ap. 33, 34). The Petitioner objected and does now because the government insisted upon presenting the Selective Service in before the jury and then objected and the Court sustained the objection to his attempts to go into the content of the selfsame file. Petitioner believes that he had the right and that this court will uphold his right to explain what was in that file and what part thereof is contradicted by him particularly after the Trial Court at least twice stated that the whole of the file will go to the jury. (Ap. 25).

In *Cox* v. *United States*, 332 U.S. 442 (1947), 457, 68 S.Ct. 115, in footnote 4, this court refers to *Smith* v. *United States*, (4 Cir.) 157 F.2d 176, wherein the Court of Appeals of that circuit "held that the submission of the issue of classification to the jury constituted reversible error." Petitioner admits that the Trial Court attempted by its instructions to make it clear to the jury that the classification is not before it, however, the jury was thus put before a dilemma since it had the file before it but it was told to look at it only with one eye and thus a

situation was created which undoubtedly prejudiced him. The prejudice was the greater because he was precluded by the Trial Court from questioning some of the document in his file.

Because there is a conflict between the holdings of, in this case, of the 7th and that of the *Smith* case in the 4th circuit, petitioner respectfully submits that this court ought grant the petition for a writ and to review the case and thus decide which of the two antagonistic positions is the law.

VI.

THE REFUSAL OF THE TRIAL COURT TO ORDER THE PRODUCTION OF THE HEARING OFFICER'S REPORT WHEN THE TRUTHFULNESS OF THE REFERENCE THERETO WAS CHALLENGED BY PETITIONER WAS HIGHLY PREJUDICIAL TO HIM.

The Court of Appeals disposes of petitioner's challenge to the Trial Court ruling twice refusing an order to produce the Hearing Officer's report when it states (p. 5)

> "There was no error in the District Court's ruling which precluded production of the Department of Justice hearing officer's report and no error in denying the motion for acquittal on this ground. Neither the Act nor the regulation, since 1952, requires the report placed in the file. *Gonzales* v. *United States*, 364 U.S. 59 (1960).

Petitioner has no quarrel with the statement that the regulations, at least since 1952, do not require the Hearing Officer's report be made part of the file, but he quarrels with the holding that the decision in this court in *Gonzales* v. *United States*, 364 U.S. 59, 80 S. Ct. 1554, means that under the circumstances of this case such an order

to produce was not required. To the contrary, he says that he was prejudiced by the denial of his motion because as this court said in the *Gonzales* case,

> ". . . petitioner has failed to show any particular need for the report and notes. While there are now allegations of the withholding of 'favorable evidence developed at the hearing' and a denial of a 'full and fair hearing,' no such claim was made by petitioner at any stage of the administrative process. Moreover, his testimony at trial never developed any such facts. *In the light of these circumstances*, as well as the fact that the issue at trial in this respect centered entirely on the Department's recommendation, which petitioner repudiated but which both the appeal board and the courts below found supported by the record, we find no relevancy in the hearing officer's report and notes." (page 1557) (emphasis added)

In our instant case, all of the missing factors in the *Gonzales* case are present. Malcolm Parker did challenge the fairness of his hearing throughout his administrative process and particularly challenged in government's Exhibit B-17 the correctness of the hearing officer's report found in government's Exhibit B-16 and continued his argument in the trial court. Malcolm Parker during his testimony, continued to state that the remarks of the hearing officer in his report were not factual and denied the quoted contents of the hearing officer's report most pointedly, claiming that the hearing officer's report would contain evidence favorable to him. In the instant case, we believe that the hearing officer's report was the very basis for the Department of Justice's recommendation and if such was repudiated, certainly this is a direct issue and the relevancy of the hearing officer's notes and his original report to the Department of Justice is very clear. The defendant submits that under the circumstances of

this case and to obtain a full and fair hearing, it was necessarily required that the report of the hearing officer be produced.

Petitioner submits that the Appeal Board rejected his claim on an incomplete presentation because it had before it the recommendation of the Department of Justice (B-16) which referred to a Hearing Officer's report and pertained to "some part of that report." This alleged quotation was challenged by the petitioner both before the Appeal Board and before the Trial Court. Neither of these authorities had the Hearing Officer's report before it and of course, neither of them could determine whether the challenge of the petitioner was justified. By force there was a choice to be made whether the Department of Justice recommendation was non-factual or whether the petitioner was not honest in his challenge of the Department of Justice allegations. From the fact that both the Appeal Board and the Trial Court ruled against petitioner one must presume that the sincerity of his challenge to Exhibit B-16 was considered negatively which undoubtedly was carried forward and his sincerity as a whole was thereby questioned. The prejudice so resulting was great and irremediable. There was error in denying his motion to order the production of the hearing officer's report and in the light of the circumstances of this case, the decisions of the lower courts are in direct conflict with the decision of this Court in the case of *Gonzales v. United States*, 364 U.S. 59, 80 S. Ct. 1554.

In view of this prejudicial error this Court ought to grant a certiorari and ought to review the case.

CONCLUSION.

> "Fundamental too, in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after a fair trial. The hearing, moreover, must be a real one, not a sham or pretense." *Palko* v. *State of Conn.*, 302 U.S. 319, 58 S.Ct. 149.

Petitioner submits that not only was he condemned without a fair trial but the hearings that he received throughout the Selective Service proceedings were not real but solely pretenses. He submits that the writ of certiorari ought to be granted.

Respectfully submitted,

FRANCIS HEISLER
MARK L. SCHWARTZMAN
7 South Dearborn Street
Chicago 3, Illinois
Attorneys for Petitioner.

Chicago, Illinois
October 11, 1962

APPENDIX A.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13585 SEPTEMBER TERM, 1961 APRIL SESSION, 1962

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. MALCOLM LEBERT PARKER, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

August 20, 1962

Before SCHNACKENBERG, KNOCH, and KILEY, *Circuit Judges.*

KILEY, *Circuit Judge.* This is an appeal from the judgment on verdict of a jury, convicting defendant of violation of § 12 of the Universal Military Training and Service Act[1] by his refusal to submit to induction into military service. He was sentenced to the custody of the Attorney General for two years, and was fined $1,000.00.

The defendant Parker, a member of the Harshmanite religious sect,[2] registered for the draft before Local Board 177 in Sullivan, Illinois, May 9, 1955. He was classified 1-A-O[3] and subsequently that classification was confirmed by the Board after a hearing upon Parker's objection to the classification on the ground that his "religious belief,"

[1] 50 U.S.C.A. App. § 462.

[2] The Church of Jesus Christ, Sullivan, Illinois.

[3] This classification covers those who are opposed to combatant service but inductible in a noncombatant capacity.

On Parker's appeal to the Illinois State Appeal Board, the Department of Justice, by virtue of § 6(j)[1] of the Act, made an inquiry into the case, and granted a hearing upon his claim to an exemption as a conscientious objector under classification 1-O.[2] He and four witnesses appeared before the hearing officer who found Parker had not sustained his claim and recommended the 1-A-O classification. The Department of Justice concluded that Parker had established his conscientious objection to combatant military service but not with respect to non-combatant service. The Department recommended to the Appeal Board that he be classified 1-A-O.

Parker submitted his reasons in writing to the Appeal Board for not accepting the classification. The Board by unanimous vote again classified him 1-A-O. He was then examined physically and found acceptable for service. The Local Board thereafter "reopened and considered anew" the classification and retained him in 1-A-O. No further steps were taken by Parker for another personal appearance or appeal. He was ordered by the Board to report for induction. He reported, but refused to submit to induction. His indictment, trial, and conviction followed.

We see no merit in Parker's contention that there was no basis in fact to support the court's decision not to interfere with his classification.

The Act makes no provision for the customary scope of judicial review; courts are not to weigh the evidence to determine whether the classification was justified; if in conformity with regulations, the Board decisions are final, even if erroneous; and the question of jurisdiction is reached only if there is no basis in fact. *Estep v. United States*, 327 U. S. 114 (1946).

The District Court's function was to ascertain "whether there was a basis in fact for the classification." *United*

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[1] U.S.C.A. App. § 456(j) (1961 Supp.).

[2] This classification covers those individuals conscientiously opposed to participation in the armed forces in either a combatant or noncombatant capacity.

States v. *Van Hook*, 7 Cir., 284 F. 2d 489, 494, reversed and remanded for resentencing, 365 U. S. 609 (1961). The court was confined to a review of Parker's file in deciding whether a basis in fact existed. *United States* v. *Mohammed*, 7 Cir., 288 F. 2d 236, 238, cert. denied, 368 U. S. 820 (1961). It was not to look for substantial evidence to support the determination of the Local or Appeal Board. *Witmer* v. *United States*, 348 U. S. 375, 381 (1955).

In his classification questionnaire Parker claimed a status of conscientious objector to participation in war in any form. He requested, filled out and returned to the Local Board the special S.S.S.* form reiterating his claim "by reason of my religious training and belief;" stating his belief in a Supreme Being; his membership in the Church of Jesus Christ in which he was raised and whose teachings he accepted; and in a typewritten statement expanded on his belief and its basis in the Bible.

The Department of Justice hearing officer on Parker's appeal to the Appeal Board found that Parker worked for Community Industries, a Harshmanite enterprise, which produced WAC uniforms, candy for army rations, valves used on naval vessels, and other items usable in war; that Parker did not consider it immoral or in violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite "reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference;" and that Parker subscribed to the beliefs and opinions of the Harshmanites.

Because we have concluded the District Court did not err in deciding there was a basis in fact for the classification, it follows that the induction order was not void. And it also follows that the District Court did not err in denying Parker's motion for acquittal at the close of the Government's case, for want of a basis in fact.

Parker relies on *United States* v. *Dickinson*, 346 U. S. 389 (1953) to set aside the classification. The Appeal Board's

*The Selective Service System, herein referred to as the S.S.S.

decision on the basis of a registrant's file, giving "consideration" to the recommendation of the Department of Justice, is usually the final determination of the Selective Service System. *Witmer* v. *United States*, 348 U. S. 375, 377 (1955). In that case, the court interpreted *Dickinson* to hold that there was no basis in fact for the classification because there was no evidence, "incompatible with" Dickinson's proof, to rebut his prima facie case, made out by objective facts. That distinguished Witmer's case from Dickinson's, and distinguishes Parker's. In *Witmer* and here, the question cannot be determined on objective facts such as Dickinson's, which involved a ministerial status. Once Dickinson's status was determined prima facie, the Government was required to produce a basis in fact on which the court could decide his claims were not as stated. In Parker's case the question is whether there is affirmative evidence produced by the Government that he has not "painted a complete or accurate picture." *Witmer* v. *United States*, 348 U. S. 375, 382 (1955). "When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption" courts may not inquire further as to the correctness of the board's order. *United States* v. *Simmons*, 7 Cir., 213 F. 2d 901, 904 (1954), revered, other grounds, 348 U. S. 397 (1955).

Parker also relies upon *Batterton* v. *United States*, 8 Cir., 260 F. 2d 233 (1958), which is not in his favor on the facts before us. And each case must "of necessity be based on the particular beliefs of the individual." *Sicurella* v. *United States*, 348 U. S. 385, 390 (1955). The court there said the record "does not even by indirection," deny Sicurella's sincere religious beliefs. Parker argues the record here as to him is like that record as to Sicurella. But Sicurella's sincerity was admitted and the court said "we are therefore relieved of the task of searching the record for basis in fact to support a finding of insincerity." p. 388.

We see no inconsistency in the Department of Justice and the Board recognizing Parker's sincerity of religious belief and the classification based on the admitted fact of

his willingness to participate in the production of war goods. The Department of Justice recommendation discloses Parker's view that "it would not be considered immoral or a violation of their Christian duty to manufacture ammunitions * * *." This fact would suffice to rebut Parker's prima facie showing. We do not read the language of *Witmer* v. *United States*, 348 U. S. 375 (1955) that "there must be one inference of insincerity or bad faith" to mean that there must be evidence that registrant is a hypocrite or liar. The Board was not required to classify Parker 1-O merely because he stated he was opposed "to participation in war in any form." His testimony taken as true disclosed that he did participate in aiding the war effort. There is a distinction between a conviction based on a sincere religious belief and a conviction based on an erroneous inference about what participating in a war means. In *United States* v. *Wilson*, 7 Cir., 215 F. 2d 443 (1954), the nature of Wilson's employment was not incompatible with his prima facie proof of 1-O classification and the file contained no affirmative evidence to support the National Board's 1-A classification. That case does not aid Parker.

Parker's file does not show that he was given notice of the time and place of hearing by the Department of Justice examiner or sent a copy of the Department recommendation to the Appeal Board, to which he was entitled to file a written reply. He contends there was not full compliance therefore with the Selective Service regulations. The Department of Justice letter to the Board discloses a hearing was had and the file contains Parker's letter or "reply" to the Appeal Board. There is no substance to this contention. And we are not to determine the truth or falsity of the evidentiary basis of the Department of Justice recommendation unless the irregularities affected the Appeal Board's review. *United States* v. *Moore*, 217 F. 2d 428, reversed on other grounds, 348 U. S. 966 (1955).

The Local Board clerk testified that the Board "felt they were doing their best to acknowledge the registrant's religion * * *" and thus, according to Parker, showed that

emotion rather than the law permeated the Local Board proceeding. The only relevant issue before us in this case is the classification of the Appeal Board in its independent, de novo proceeding. This proceeding superseded the Local Board's hearing because there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board. *United States* v. *Van Hook*, 7 Cir., 284 F. 2d 489, reversed and remanded for resentencing, 365 U. S. 609 (1961). Nor is there merit in the contention that the recommendation of the Department of Justice stating that the courts consistently upheld 1-A-O classification where there was a willingness to do work supporting the war effort unduly influenced the Appeal Board and denied him due process. Since there is affirmative evidence to support the classification, we presume in the absence of further showing that the Appeal Board did not fail in its duty to respect Parker's rights.

There was no error in the District Court's ruling which precluded production of the Department of Justice hearing officer's report; and no error in denying the motion for acquittal on this ground. Neither the Act nor the regulation, since 1952, requires the report placed in the file, *Gonzales* v. *United States*, 364 U. S. 59 (1960).

The only relevant questions at the trial were whether there was a basis in fact for the classification; and if so, whether Parker refused to submit to induction. The first question was for the judge, not the jury, upon the S.S.S. file, *Cox* v. *United States*, 332 U. S. 442 (1947), rehearing denied, 333 U. S. 830 (1948). The trial court properly refused to permit cross-examination of witnesses before the jury, on the S.S.S. file, and properly sustained objections in testimony and rejected offer of proof on testimony bearing on the classification by the Local Board.

The only question for the jury in this case was whether Parker refused to submit. The court erred in permitting the S.S.S. file to go to the jury, for, as the court in *Cox* said, "* * * nothing in the file is pertinent to any issue proper for jury consideration." But we see no prejudice

from this fact since the jury had already heard oral testimony of the substance of its contents. The court properly precluded testimony that Parker's intention in refusing to "step forward" was merely to test the Draft Board's right to order his induction.

The court refused to give Parker's proferred instruction setting forth § 6(j) of the Act. This was not error. The question of exemption from service was not for the jury. Nor was there error in the refusal to give an instruction on bias and prejudice, because there was no evidence from which an inference could be drawn that bias or prejudice influenced the Appeal Board's classification. We have read the other refused instructions, and arguments for them in the transcript, and see no error in the rulings. The court should not have instructed the jury on its "independent review of the evidence" nor on credibility of witnesses in this case. But these errors were not prejudicial.

The judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS.
For The Seventh Circuit
Chicago 10, Illinois
Monday, August 20, 1962

Before

Hon. Elmer J. Schnackenberg, Circuit Judge

Hon. Win Win G. Knoch, Circuit Judge

Hon. Roger J. Kiley, Circuit Judge

United States of America,
Plaintiff-Appellee,
No. 13585 vs.
Malcolm Lebert Parker,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois
Friday, September 14, 1962

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Win Win G. Knoch, Circuit Judge
Hon. Roger J. Kiley, Circuit Judge

United States of America, Plaintiff-Appellee, vs. Malcolm Lebert Parker, Defendant-Appellant.	No. 13585	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.

APPENDIX B.

50 U.S.C. 462; 62 Stat. 622. OFFENSES AND PENALTIES.

(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title (sections 451-454 and 455-471 of this Appendix), or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title (said sections), rules, regulations, or directions who shall knowingly make, or be a party to the making of any false, improper, or incorrect registration, classification; physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title (said sections), or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title (said sections), or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title (said sections), or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title (said sections), or rules, regulations, or directions made pursuant to this title (said sections), or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this (said sections) or the rules or regulations made pursuant thereto, or who conspires to commit any one or

more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000.00, or, by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title (said sections) unless such person has been actually inducted for the training and service prescribed under this title (said sections) or unless he is subject to trial by court martial under laws in force prior to the enactment of this title (June 24, 1948). Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing. * * * June 24, 1948, c. 625, Title 1, p. 12, 62 Stat. 622.

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

General Principles

1622.1 *General Principles of Classification.* (a) The Universal Military Training and Service Act, as amended, provides that every male citizen of the United States, every male alien admitted to the United States for permanent residence, and every male alien who has remained in the United States in a status other than that of permanent resident for a period exceeding one year, who is between the ages of 18 years and 6 months and 26 years, shall be liable for training and service in the Armed Forces of the United States, and that persons who on June 19, 1951, were or thereafter are, deferred under the provisions of clause (A) or clause (C) of section 6(c)(2) of such Act shall remain liable for training and service until they attain the age of 28, and that persons who on June 19, 1951, were, or thereafter are, deferred under any other provision of section 6 of such Act shall remain liable for training and service until they

attain the age of 35. Certain exemptions and deferments are specifically provided; others are authorized to be provided by regulations promulgated by the President.

(b) Classification is the key to selection and it must be accomplished in the spirit of the Universal Military Training and Service Act, as amended, in which the Congress has declared "that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

(c) It is the local board's responsibility to decide, subject to appeal, the class in which each registrant shall be placed. Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. The local board will receive and consider all information, pertinent to the classification of a registrant, presented to it. The mailing by the local board of a Classification Questionnaire (SSS Form No. 100) to the latest address furnished by a registrant shall be notice to the registrant that unless information is presented to the local board, within the time specified for the return of the questionnaire, which will justify his deferment or exemption from military service the registrant will be classified in Class I-A.

(d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious or other organization. Each such registrant shall receive equal justice.

1622.2 *Classes.*—Each registrant shall be classified in one of the following classes:

CLASS I

Class I-A: Available for military service.

Class I-A-O: Conscientious objector available for noncombatant military service only.

Class I-C: Member of the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service.

Class I-D: Member of reserve component or student taking military training.

Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.

1622.11 *Class I-A-O; Conscientious Objector Available for Noncombatant Military Service Only.*—(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.14 *Class I-O; Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form

and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.16 *Class I-W: Conscientious Objector Performing Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with the order of the local board.

(b) In Class I-W shall be placed any registrant who subsequent to being ordered by the local board to perform civilian work contributing to the maintenance of the national health, safety, or interest has been released from such work by the local board after satisfactorily performing the work for a period of twenty-four consecutive months or has been sooner released from such work by the Director of Selective Service under the provisions of section 1660.21 of this chapter. Each such registrant shall be identified on all records by following his classification with the abbreviation "Rel." and, upon attaining an age beyond the maximum age of liability for military service under the provisions of the selective service law, all such registrants shall be reclassified in Class V-A.

PROCEDURE FOLLOWED BY APPEAL BOARD

1626.25 *Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.* (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall tentatively determine whether or not the registrant is eligible for classification in a class lower than Class 1-O or in Class 1-O. If the appeal board finds that the registrant is eligible for classification in Class 1-O or in a lower class, it shall place him in the appropriate class.

(b) If the appeal board tentatively determines that the registrant is not entitled to classification in either a class lower than Class 1-O or in Class 1-O, it shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(c) No registrant's file shall be forwarded to the United States Attorney by any appeal board unless the record on the Classification Questionnaire (SSS Form No. 100) shows and the letter of transmittal states that the appeal board reviewed the file and tentatively determined that the registrant should not be classified in Class 1-O or in a lower class. Any file forwarded to the United States Attorney without the information required by this paragraph shall be returned to the appeal board.

(d) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraphs (b) and (c) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall

be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(e) Upon receipt of the recommendation of the Department of Justice, the appeal board shall mail a copy thereof to the registrant together with a letter advising the registrant that, within thirty days after the date of such mailing, he may file with the appeal board a written reply concerning the recommendation of the Department of Justice. Upon receipt of the reply of the registrant or the expiration of the period afforded him to make such reply, whichever occurs first, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice. The appeal board also shall give consideration to any reply to such recommendation received from the registrant. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the recommendation of the Department of Justice, a copy of its letter transmitting a copy of such recommendation to the registrant, and any reply to such recommendation received from the registrant.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 516

MALCOLM LEBERT PARKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 71–76; Pet. App. 1–7) is not yet reported.[1]

JURISDICTION

The judgment of the court of appeals was entered on August 20, 1962 (R. 71, 77; Pet. App. 1, 8). A petition for rehearing was denied on September 14, 1962 (R. 78; Pet. App. 9). The petition for a writ of certiorari was filed on October 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] Most of the issues raised in this petition are also raised in No. 515, this Term. Since the major opinion of the court of appeals was written in this case, we discuss the common issues here and deal in No. 515 only with the issues which are confined to that case.

QUESTIONS PRESENTED

1. Whether there was a basis in fact for petitioner's classification in selective service class 1-A-O (noncombatant service).

2. Whether various rulings by the trial judges were proper.

STATEMENT

An indictment returned in the United States District Court for the Northern District of Illinois charged that the petitioner, on September 14, 1960, willfully refused to submit to induction into the armed forces of the United States, in violation of 50 U.S.C. App. 462 (R. 2–3). After a jury trial in September 1961, petitioner was convicted and sentenced to imprisonment for two years and fined $1,000 (R. 2, 4, 63, 64, 66–67). The conviction was affirmed on appeal (R. 71–76, 77; Pet. App. 1–7, 8).

The pertinent facts may be summarized as follows:

1. Petitioner is a member of the Harshmanite Church of Sullivan, Illinois, which opposes military training and service. In 1955, petitioner registered for the draft with Local Board No. 177 in Sullivan, Illinois. He subsequently filed a special form for conscientious objectors in which he stated that, because of his religious beliefs, he was conscientiously opposed to participation in war in any form, including noncombatant training and service (R. 31; G. Ex. B–2).[1] Petitioner stated that from about May 1954 he had worked for Community Industries, a business enter-

[1] We have lodged with the Clerk of this Court the Selective Service file of the petitioner which was an exhibit at the trial. This will be referred to as "G. Ex. B," and the appropriate document therein will be referred to by number.

prise established by the Harshmanites, the chief purpose of which is to provide employment for its members (G. Ex. B–1). In October 1955, the local board classified him 1–A–O, *i.e.*, eligible for non-combatant service (G. Ex B–1). After the petitioner had made a personal appearance before the local board in support of his claim that he was entitled to a 1–O classification (exempt from non-combatant and combatant military training and service), the board again classified him 1–A–O (Gov. Exs. B–1, B–3, B–8, B–9, B–12, B–15). Petitioner then appealed his classification to the Illinois Selective Service Appeal Board (G. Ex. B–10.) In a letter to the Appeal Board, petitioner alleged that one member of the local board had told him that they would not give anyone a 1–O classification (G. Ex. B–12).

Pursuant to Section 6(j) of the Universal Military Training and Service Act (50 U.S.C. App. 456(j)), the Department of Justice investigated petitioner's case for the purpose of making a recommendation to the State Appeal Board. After a hearing before a departmental hearing officer, at which the petitioner and four others appeared, the Department of Justice, in June 1957, recommended that petitioner be classified 1–A–O (G. Ex. B–16). The Department reported that the hearing officer had been impressed with petitioner's truthfulness and frankness. It then recited (G. Ex. B–16):

> The registrant explained that although Community Industries does not manufacture munitions in the ordinary sense of the word they do manufacture other items for military consump-

tion such as tents, WAC uniforms, candy for army rations and some sort of valve used on Naval vessels and other items. He said that it would not be considered immoral or a violation of their Christian duty to manufacture ammunition and that their reluctance to manufacture munitions is not a matter of religious beliefs but merely a matter of preference. The registrant concluded by verifying that all of the above beliefs and opinions of the Harshmanites, in general, are also his own personal beliefs and opinions.

The Department reported its opinion that petitioner had failed to sustain his claim with regard to non-combatant service. A copy of the Departmental recommendation was sent to the petitioner (R. 47, 49).

In a letter to the Appeal Board of July 30, 1957, petitioner disputed a statement in the report that his objection to service was based on the Commandment not to kill, asserting that his beliefs were based on the New Testament direction to love one's enemies. He said that in the non-combatant service he would be under a force whose main purpose is killing. He said that during the war the members of the church were given 4E (equivalent to 1-O classifications) and "at that time they were manufacturing war goods." He said that "[t]he goods that we manufactured for use in the Army or Navy could be used by civilians too. The goods that we manufacture is not directly involved in killing and fighting" (G. Ex. B-17). In December 1957, the Appeal Board classified the petitioner 1-A-O (G. Ex. B-1, B-15).

On May 11, 1960, the local board reopened and considered anew petitioner's classification. It reclassified him 1-A-O (G. Ex. B-1; see G. Ex. B-24). Petitioner did not request a personal appearance before the board, nor did he appeal the classification.

The local board subsequently ordered petitioner to report for induction into the armed forces on September 14, 1960 (G. Ex. B-26). Petitioner reported at the induction center but refused to submit to induction on the ground that his religious beliefs would not permit him to do so (R. 12-13, 15-16, 38-40; G. Exs. B-1, B-28).

2. At the trial, petitioner's Selective Service file was introduced into evidence. Petitioner testified as to the contents of certain documents in that file and one such document was read to the jury by petitioner's counsel (R. 8, 31-37). The court refused to order the production by the government of a copy of the hearing officer's report, which was not included in petitioner's Selective Service file (R. 10). The court refused to allow the petitioner to offer proof at the trial that the Community Industries never directly or indirectly manufactured any "war material"; that a witness heard a local board member say that no one would receive a 1-O classification; that certain statements in the recommendation of the Department of Justice to the Appeal Board were untruthful; and that petitioner had certain religious beliefs which he communicated to the local board (R. 27-29, 40-47).

The court, which had previously ruled that there was a basis in fact for petitioner's classification (R. 17, 18), denied motions for judgment of acquittal (R.

18, 50). After conviction a motion for new trial on the ground that the verdict was against the law and the weight of the evidence was also denied (R. 63–64).

ARGUMENT

The fundamental error which underlies most of the contentions made by petitioner is his apparent assumption that, at his trial for refusal to submit for induction, it was the function of the jury to determine whether petitioner was entitled to a 1–O classification. It is established that this is not the function of the jury at all; it is not even the function of the trial judge. At the criminal trial, the trial judge does have a duty to determine, on the administrative record, whether there was a basis in fact for the classification given. If such basis in fact is found to exist, the determination of the Selective Service system must be accepted. See *Estep* v. *United States*, 327 U.S. 114, 122–123; *Cox* v. *United States*, 332 U.S. 442.

As this Court pointed out in *Witmer* v. *United States*, 348 U.S. 375, 380–381:

> It is well to remember that it is not for the courts to sit as super draft boards, substituting their judgments on the weight of the evidence for those of the designated agencies. Nor should they look for substantial evidence to support such determinations. *Dickinson* v. *United States*, 346 U.S. 389, 396 (1953). The classification can be overturned only if it has "no basis in fact." *Estep* v. *United States*, 327 U.S. 114, 122 (1946).

When petitioner's arguments are examined in the light of these principles, it becomes clear that the

only question which this case really presents is whether there was basis in fact for the 1-A-O classification, *i.e.*, for concluding that petitioner was not actually conscientiously opposed to non-combatant service. Under the standard of the *Witmer* case there was.

1. The basis in fact for petitioner's I-A-O classification was his admission before the Departmental hearing officer that Community Industries for which he worked manufactured tents, WAC uniforms, candy for army rations and valves for naval vessels; that the Harshmanites did not consider that the manufacture of munitions would violate their Christian duty; that the reluctance of the Harshmanites to manufacture munitions was not a matter of religious belief but a matter of preference; and that he subscribed to those beliefs and opinions of the Harshmanites (G. Ex. B-16). Petitioner did not challenge these admissions at any time during the remainder of the administrative proceedings. Indeed, in his letter to the Appeal Board of July 1957—after he had received a copy of the Departmental recommendation—he said that the "goods that we manufactured for use in the Army or Navy could be used by civilians too" (G. Ex. B-17). Whether in fact Community Industries did or did not manufacture valves for naval vessels or other items mentioned is not significant. What is significant is the nature of petitioner's beliefs as reflected in his own interpretation of the position of his sect. Since petitioner's expression of a personal belief showed a willingness to produce goods directly related to the conduct of a war, there was

basis in fact for the I–A–O classification. See *White* v. *United States*, 215 F. 2d 782, 786 (C.A. 9), certiorari denied, 348 U.S. 970; *Blalock* v. *United States*, 247 F. 2d 615, 619 (C.A. 4); *Meredith* v. *United States*, 247 F. 2d 622, 623 (C.A. 4); *Jones* v. *United States*, 241 F. 2d 704, 705–706 (C.A. 4); *United States* v. *Van Hook*, 284 F. 2d 489 (C.A. 7), reversed and remanded for resentencing, 365 U.S. 609; *United States* v. *Moore*, 217 F. 2d 428, 434–435 (C.A. 7), reversed on other grounds, 348 U.S. 966. It was for the Board to consider the persuasiveness of petitioner's explanation that, although he was not conscientiously opposed to war-connected activity, he was conscientiously opposed to being part of a military organization.

2. In the light of the nature of the issues at the trial, as discussed above, petitioner's objections to various rulings at the trial (Pet. 29–33) are without merit.

a. The trial court properly refused to allow the petitioner to introduce evidence bearing upon his classification or to challenge the Departmental recommendation to the Appeal Board (see Pet. 28–29). See Statement, *supra* p. 5. The only relevant question bearing upon petitioner's classification at the trial was whether there was a basis in fact for that classification, a question for the court to determine on the basis of petitioner's Selective Service file. *Cox* v. *United States*, 332 U.S. 442. Petitioner had ample opportunity in the administrative proceedings to challenge the Departmental recommendation or to have lodged in his file any material deemed necessary in support of his claim.

b. There is no merit to petitioner's contention (Pet. 25–27) that the local board was prejudiced against him because a board member in September 1956 allegedly told him that the board would not classify anyone in class 1–O, and that this prejudice tainted the entire classification proceedings in the case. Not only was there a classification *de novo* by the appeal board[3] but petitioner's classification was considered anew in May 1960. The classification upon which petitioner was ordered to report and submit to induction was the result of the new proceedings in May 1960—three and one-half years after the alleged incident giving rise to the claim of prejudice—and was by a board panel which did not include the gentleman (Mr. Bone) who allegedly made the prejudicial statement (G. Ex. B–1).[4] Whether the local board in September 1956 applied proper standards, therefore, is immaterial. See *Goetz* v. *United States*, 216 F. 2d 270, 272 (C.A. 9); *United States* v. *Hartman*, 209 F. 2d 366, 368 (C.A. 2); *Evans* v. *United States*, 252 F. 2d 509, 511 (C.A. 9); *United States* v. *Moore*, *supra*, 217 F. 2d at 433–434; *Tyrrell* v. *United States*, 200 F. 2d 8, 11 (C.A. 9), certiorari denied, 345 U.S. 910; *United States* v. *Chodorski*, 240 F. 2d 590, 591 (C.A. 7), certiorari denied, 353 U.S. 950; *Reed* v. *United States*, 205 F. 2d 216, 218 (C.A. 9), certiorari denied, 346 U.S. 908.

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[3] See in this connection the record in No. 515.

[4] Petitioner's classification in September 1956 was by a board vote of 4–0, and was initialed by board members as follows: "EWM", "JAS", "HLB", and "DLW" (G. Ex. B–1). Petitioner's classification in May 1960 was by a board vote of 3–0, and was initialed by board members as follows: "JAS", "PLS" and "DDH" (G. Ex. B–1).

c. At the trial, petitioner's Selective Service file was introduced into evidence. Thereafter, petitioner testified as to the contents of certain documents contained in that file, and counsel for the petitioner read to the jury one document (R. 31–32, 35). The court indicated that it intended to send all of the exhibits in the case to the jury for their examination (R. 33). Petitioner objected to this ruling on the ground that government counsel had indicated that some of the documents contained in that file were hearsay (*i.e.*, the report of the statement by Bone (R. 24, 33)). No objection was made, however, when the file was sent to the jury (see R. 63). Petitioner contends (Pet. 29–31) that error was committed in sending the file to the jury, and that he was somehow prejudiced by that action although the court instructed the jury that they were not to consider the question of his classification.

While it was technically incorrect to send the file to the jury since there was nothing in the file which bore upon the jury's function of determining whether the petitioner had willfully refused to submit to induction, the error was harmless. The jury was instructed that the court had found a basis in fact for petitioner's classification; that the classification had been made in accordance with the regulations and the law; that the jury was not to concern itself with petitioner's classification "because under the law that is not an issue which the jury is authorized to determine"; and that they were to determine whether the petitioner willfully failed to submit to induction into the armed forces (R. 52–56).

d. The district court properly denied petitioner's request for production of the hearing officer's report at the trial (R. 8, 10). *Gonzales* v. *United States*, 364 U.S. 59, 63. In that case, this Court held that there was nothing in the Universal Military Training and Service Act which required production of the hearing officer's report, which was merely intra-departmental and did not constitute the recommendation of the Department of Justice. The Court went on to say (*Id.* at 64):

> * * * In addition, petitioner has failed to show any particular need for the report and notes. While there are now allegations of the withholding of "favorable evidence developed at the hearing" and a denial of a "full and fair hearing," no such claim was made by petitioner at any stage of the administrative process. Moreover, his testimony at trial never developed any such facts. In the light of these circumstances, as well as the fact that the issue at trial in this respect centered entirely on the Department's recommendation, which petitioner repudiated but which both the appeal board and the courts below found supported by the record, we find no relevancy in the hearing officer's report and notes.

Petitioner seeks to bring himself within the quoted language by arguing (Pet. 31–33) that he challenged the "fairness" of the Departmental hearing throughout the administrative process, and that he challenged the hearing officer's report before the Appeal Board and the trial court. In his letter to the Appeal Board, petitioner challenged the accuracy only of the statement that his reason for non-acceptance of the

I-A-O classification was the Commandment, "Thou shalt not kill", stating that he based his attitude on the teachings of the New Testament (G. Ex. B-17). This was emphasized when petitioner read that particular exhibit in his Selective Service file to the jury (R. 35). The sincerity of petitioner's opposition to combat was, however, never at issue in the administrative proceedings. The important fact is that petitioner, in his letter to the Appeal Board, did not challenge the accuracy of petitioner's statements as to the willingness to manufacture goods for war, although, manifestly, he knew of his right to refutation of the Department's report. Having thus failed to make the challenge at the administrative hearing, he could not do so at the trial.

CONCLUSION

For the reasons set forth, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, Jr.,
Assistant Attorney General.
BEATRICE ROSENBERG,
RICHARD W. SCHMUDE,
Attorneys.

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No. 516

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

MALCOLM LEBERT PARKER,
Petitioner;

vs.

UNITED STATES OF AMERICA,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF PETITIONER.

FRANCIS HEISLER,
MARK L. SCHWARTZMAN,
7 South Dearborn Street
Suite 1730
Chicago 3, Illinois

CHARLES A. STEWART
P. O. Box 3996
Seventh and Lincoln
Carmel, California,
Attorneys for Petitioner

FRANCIS HEISLER
7 South Dearborn Street
Suite 1730
Chicago, Illinois,
Of Counsel

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1962.

No. 516

MALCOLM LEBERT PARKER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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BRIEF OF PETITIONER.

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is printed on pp. 60 to 66 of the Transcript of Record (R 60 to 66), and is reported at 307 F. 2d 585 (1962).

JURISDICTION BELOW.

The judgment of the Court of Appeals was entered on August 20, 1962 (R 60), Petition for Rehearing was denied on September 14, 1962 (R 67). The Petition for a Writ of Certiorari was filed on October 15, 1962, and was granted on December 17, 1962 (R 67).

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), also Rule 37(b) and 44(a) F.R. Crim. Proc.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The constitutional provisions, statutes, and regulations involved are set forth in the appendix, *infra*, pp. 1a-8a.

QUESTIONS PRESENTED FOR REVIEW.

I.

Whether the Court of Appeals correctly ruled that this Court's decision in *Dickinson v. U.S.*, 346 U.S. 389, 74 S.Ct. 152, applies only to cases which involve "ministerial status."

II.

Whether the Courts below correctly ruled that there was a *basis in fact* for the denial of petitioner's exemption as a conscientious objector to both combatant and non-combatant service on the ground of religious training and belief on the sole ground that he was employed in a candy factory as a laborer, a small part of the products of which factory were purchased by the Armed Forces.

III.

The Local Board before which petitioner was classified did not consider it fair to other registrants to grant anyone a conscientious objector classification, exempting him from combatant and non-combatant service. That Board granted petitioner exemption from non-combatant service only, even though acknowledging the sincerity of his claim. The Appeal Board classified the petitioner

de novo, but gave him the same classification as the Local Board did. Did the Appeal Board's classification of *de novo* overcome the Local Board's illegal conduct and petitioner's deprivation of due process?

IV.

Was it a prejudicial error by the Trial Court, notwithstanding of the Court of Appeals holding to the contrary, to prevent petitioner to present evidence attempting to overcome the Government's *ex parte* statement alleging that the company that employed petitioner was manufacturing implements of war.

V.

Was it a prejudicial error on the part of the Trial Court notwithstanding the holding of the Court of Appeals to the contrary, to permit the Government to place into evidence petitioner's Selective Service file and permit the same to be taken by the jury and at the same time depriving petitioner of the opportunity to offer evidence explaining the contents of the Selective Service file.

VI.

Did the Trial Court commit a prejudicial error notwithstanding the Court of Appeals' holding to the contrary, to refuse an order requested by petitioner to have the Hearing Officer's report produced when the Department of Justice's recommendation addressed to the Appeal Board referred to such Hearing Officer's report, and when petitioner challenged the truthfulness of such recommendation as it was based on the Hearing Officer's report.

STATEMENT OF THE CASE.

A one-count indictment filed in the United States District Court for the Northern District of Illinois, Eastern Division, charged petitioner with refusal to obey the order of induction of his Local Board of the Selective Service System, No. 177, Sullivan, Illinois, in violation of Sec. 462, Title 50, App. U.S.C. (R 2, 3). On his plea of not guilty, following a trial by jury, he was found guilty (R 55). He was sentenced to two years imprisonment and to a fine of $1,000 and cost of prosecution (R 56). On appeal to the United States Court of Appeals for the Seventh Circuit, the judgment was affirmed (R 66).

The trial proceedings may be summarized as follows;

1. After identifying it, the Government offered into evidence petitioner's Selective Service file. Petitioner objected to many of those documents and particularly to Exhibit B-16 (SR 50)* on the ground that the same refers to "the information given by the registrant to Mr. F. M. Brittingham, a Hearing Officer of the Department of Justice", while the Selective Service file contains no part of such information, not even a summary thereof (R 8). Over objections, the file was admitted into evidence (R 7, 8). The petitioner moved that the Government be ordered to produce the Hearing Officer's report, which motion was denied (R 9). Testimony showed that petitioner appeared at the Chicago Induction Center on September 14, 1960, and when asked to take a step forward, indicating his entering the Armed Forces, he remained standing (R 12). Thereupon the Government rested and the petitioner moved for a judgment of acquittal on the ground that the evidence did not show

* Reference to the Supplemental Transcript of Record will be made thus: (S R .....)

a basis in fact to support the classification given to him. The motion was denied (R 16).

2. Felix Hagerman, the assistant pastor of the Church of Jesus Christ of Sullivan, Illinois, to which church the petitioner belongs, and who is also an officer of the Community Industries Ltd. of the same city and which employs petitioner, testified (R 20) that the Church is not a manufacturing organization and it never was; that the company is an Illinois corporation owned by its stockholders, and that this company has never manufactured ammunition, or war goods (R 20). According to Hagerman, petitioner is employed by the company in its candy division, doing shipping and packaging. He is an hourly paid employee, with no managerial rights; that he is a good member of the Church and so was for many years (R 18, 19). The company has three divisions, one making garden machinery, another dresses, and the third candy; that the dress division in times past, has manufactured tents, and that in recent years some of the candy has been sold to Government sources (R 19). This witness was connected with the company for the last fifteen years, and during that time, it never manufactured any kind of valves used on naval vessels, and he knows that the company never made any naval equipment; that he, upon defense counsel's request, checked the records of the company and found that during World War II, the garden-tractor division, operating as a machine shop at that time, did work for the Crane Company of Chicago, and did some machining on valves for that company; where those valves were used, he did not know (R 20). Contrary to the statement in Exhibit B-16 (SR 50) in evidence to the effect that "Community Industries does not manufacture munitions in the ordinary sense of the word" (SR 51), Hagerman stated

that the company did not manufacture munitions in any sense of the word. He was not permitted to testify whether he ever heard any member of Local Board No. 177 of Sullivan, Illinois, say that no one in the jurisdiction of that Board does, or will receive 1-O classification (conscientious objectors exempted both from combatant and non-combatant service) (R 21, 22). Thereupon the Government moved and the motion was granted that Hagerman's testimony be stricken in its entirety except with reference to the reputation of petitioner, which reputation was testified to as excellent (R 23).

The petitioner offered proof that if his witness Hagerman would have been permitted to testify, he would have testified substantially as he testified before, and which testimony was stricken, and in addition, that he further would have testified that the Draft Board was biased against petitioner and that he bases it on the fact that he heard a member of Local Draft Board 177, stating that no one in Sullivan received or will receive a 1-O classification, for the reason that whenever a registrant gets a 1-O classification, another boy has to take his place to satisfy the Board's quota. He heard a Draft Board member saying that it is unfair for one to go into service when "others solely because of religious training and beliefs are exempted from doing so" (R 24, 25). Pursuant to the offer of proof, witness Hagerman would have testified that the statement of the Department of Justice directed to the Appeal Board (Exhibit B-16) (SR 50) is false when it states that the members of his Church were willing to manufacture anything in war time for the Government. To the contrary, the Church members are abiding by all laws of the land except those which compel them to act against their conscience and against the commands of the Lord, therefore, the mem-

bers of the Church would refuse to manufacture any war material that is used for destructive purposes. The offer of proof was objected to by the Government and the objection was sustained. (R 25, 26).

3. Petitioner testified that he is 24 years of age; lives in Sullivan, Illinois; that he is married and works in the candy division of the Community Industries Ltd., where he is packaging candy bars and he is a receiving clerk; that he has nothing to do with the sale or contracting of merchandise; that he was working in the candy division for 8 years; he was raised in the Church of Jesus Christ of which he is a member; so are his parents. He finished grade school and 2 years of high school. Petitioner further testified that following the teachings of his Church, he does not smoke or drink, and would not use force even in self defense. Petitioner was not permitted to answer whether he believes in a Supreme Being, because the Trial Court stated that he made an answer in the Selective Service file and that "the jury will see all of these documents. I intend to send them to the jury room for their examination" (R 29). The Government objected to the questions whether petitioner appeared before the Hearing Officer, Brittingham; what he said to the Hearing Officer concerning the basis of his objection to military service; whether the company employing him manufactured munitions or not; did he say anything to the Hearing Officer about any kind of valves used on naval vessels and allegedly manufactured by the company employing him. The objections were sustained (R 29). So was the objection to the question whether petitioner heard the Hearing Officer stating that he will recommend 1-O classification for him (R 30).

The Government also objected to questions whether petitioner ever worked for a company that manufactured

war material; whether he presently manufactured war material; whether he would manufacture war material; whether he made the statement before the Hearing Officer attributed to him in Government Exhibit B-16 (SR 50); whether at the time when he failed to take the step forward at the Induction Center, he found himself confronted with a conflict between law of the Lord and the law given by man; whether he knew at that time that there was a law providing that no person is to be subject to military service who was conscientiously opposed to it; whether he believed at that time that he was entitled to a full conscientious objector classification, and whether at the time when he remained standing at the Induction Center, he intended to violate any law. Objections were sustained (R 26 to 35).

Petitioner made an offer of proof that he was a member of the Church of Jesus Christ of Sullivan, Illinois; that he was brought up by his parents in accordance with the tenets of the Church and fully accepts the tenets thereof. Since 1954, he is employed by the Community Industries Ltd. in its Lucy Ellen candy division; that he registered with his Local Board #177, and in his classification questionnaire he truthfully stated that "by reason of religious training and belief, I am conscientiously opposed to participation in war of any form", and that he asked for 1-O classification. He answered the questionnaire, knowing the penalty for making a false statement. When he received his Special Form for Conscientious Objectors, he stated therein that "I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces . . .": He knew when he completed this questionnaire that under the Universal Military

Training and Service Act, he was entitled to claim a conscientious objector classification to all military service; he was ready, willing and able to perform for a period of 24 consecutive months such civilian work in the maintenance of national health, safety and interest, as the Local Board deemed appropriate; that he believed in a Supreme Being; he received his religious training and belief from his parents and from the Church, to which he belonged, particularly from the pastor thereof, Leah Harshman; that he stated in his questionnaire that he does not believe in using force, even in self defense; that he doesn't believe in being yoked with unbelievers; and that he tries to do good to his enemies; that in accordance with the Church tenets, he believes that one ought to "Return Good for Evil . . . to Love your enemies and do them good . . ."; that he believes in living his life in accordance with the Bible and his conscience; he doesn't believe that he can fight against his enemies and do them good; he could not, in good conscience, become, as a noncombatant a member of the Army. He believes, too, that to be connected with any organization, the main purpose of which is fighting, is contrary to God's command of no retaliation; that he was taught and believes in non-violence against evil and to overcome evil with good; that in any conflict between the Law of Love and other laws he must choose obedience to the Law of Love (R 35 to 38).

The offer of proof further submitted that the classification given to him whereby he was assigned to noncombatant status was wrong, and therefore, he appeared before the Local Board to explain why he felt being justified in claiming full conscientious objector status; that within 24 hours following his personal appearance before the Local Board, he prepared Government Exhibit B-12, (SR 47) in which he set forth the substance of the con-

versation between himself and the Draft Board members. He was again classified as a noncombatant, (1-A-O) and therefore, he appealed to the Appeal Board, and sent to the Board a letter (Government Exhibit B-17) (SR 57), in which he referred to his hearing given to him by Mr. F. M. Brittingham a Hearing Officer of the Department of Justice. In this letter, he attempted to refute the false and erroneous statements made by T. Oscar Smith of the United States Department of Justice in his recommendation to the Appeal Board (Exhibit B-16) (SR 50); that he attempted to refute Mr. Smith's statement in Exhibit B-16 as false and erroneous in that he did not tell Mr. Brittingham that the basis of his opposition to military service rested upon the Commandment "Thou shalt not kill", but upon the command, "Love your enemies, do good to them who do you evil"; that he did not state to the Hearing Officer that "although Community Industries does not manufacture munitions in the ordinary sense of the word, they do manufacture other items for military consumption such as tents, WAC uniforms, candy for rations, and some sort of valve used on naval vessels and other items". To the contrary, he told the Hearing Officer that his Church never manufactured anything; that it is a spiritual and not a business organization. He stated that Community Industries, for which he was working, never manufactured munitions in any sense of the word. They manufactured only for civilian consumption, some of which may be used for military consumption as well Contrary to T. Oscar Smith's statement, the petitioner would have testified that he never knew that Community Industries ever manufactured any kind of valve used on naval vessels; that he never stated to the Hearing Officer or to anyone else that "it would not be considered immoral or a violation of their Christian duty to manufacture ammu-

nition", and that Mr. Smith's statement is further false because petitioner never stated to anyone, including the Hearing Officer, that the Church members' "reluctance to manufacture munitions is not a matter of religious beliefs but merely a matter of preference" (R 38 to 40).

Petitioner would have further testified that he was and is in agreement with the statement of the pastor of the Church that the members thereof "would not willingly engage in the production of any article used directly to cause death"; because that would be repugnant to his principles and religious mission in this world; that he would participate in the manufacture of goods for civilian consumption even though the same may be used by the military, but he would not participate in the manufacture of any material used for destructive purposes; he would not participate in the manufacture of those things, the purpose of which is to destroy life on this earth. That he did not take the step forward at the Induction Center not because he intended to violate any of the laws, but because in taking the step forward, he would have violated his religious training and belief. When he failed to take the step forward, he knew of the Military Training and Service Act, which provides that nothing in the law should be construed to require any person who was conscientiously opposed to participation in combatant and noncombatant service to be made to perform such service. He knew of the alternative service provisions of the law, which provides for work contributing to maintenance of national health, safety and interest, and that he was willing to perform such civilian work. He believed that he had the right not to take the step forward and thereby to test whether the Draft and Appeal Boards could order him into noncombatant military service, notwithstanding his just claim to full exemption. The Government objected

to the offer of proof, and the objection was sustained (R 41).

4. A number of character witnesses testified to petitioner's good reputation (R 43, 44), and thereupon the petitioner rested and presented his Motion for Judgment of Acquittal, which Motion was denied (R 44, 45).

5. Petitioner submitted a number of instructions, among them one embodying Section 6 (j) of the Universal Military and Training Act (Title 50 App. U.S.C. (R 50, 52, Instruction "G"), and also on the matter of bias and prejudice of the Draft Board (R 54, Instructions "N", "O", "Q", "R", and "S"); on petitioner's innocent motive in refusing to take the step forward at the Induction Center (R 50, Instruction "Y"); on the failure of a party to produce evidence in his possession (R 52, Instruction "W"); on the role of the Hearing Officer and the recommendation of the Department of Justice to the Appeal Board (R 53, Instruction "K"); on the order of the Draft Board given in disregard of petitioner's procedural rights (R 15, Instruction "P" and R 55, Instruction "T"). The Government objected to all of these Instructions, and the objections were sustained (R 50 to 55).

6. The jury found the defendant guilty as charged in the indictment, and judgment of conviction was entered on the verdict (R 55).

The petitioner moved for a new trial on the ground that the verdict is contrary to the law and the evidence. The motion was denied (R 55).

7. Petitioner was given an opportunity to speak on his own behalf, and thereafter the Trial Court sentenced him to 2 years and fined him the sum of $1,000 and cost of prosecution. His appeal bond was set in the amount of $5,000 (R 56).

8. Petitioner's request that the sentence be entered under Section 4208 of the Rules of Criminal Procedure was rejected by the Trial Court (R 56).

9. Notice of appeal to the United States Court of Appeals for the Seventh Circuit was filed on October 3, 1961, (R 50). The opinion of the Court of Appeals was dated August 20, 1962 (R 60, 66). The judgment of the Court of Appeals was entered on the same day, affirming the judgment of the District Court (R 66). Petition for a rehearing was denied on September 14, 1962.

10. A petition for Writ of Certiorari was filed on October 15, 1962, and the same was allowed on December 17, 1962 (R 67).

SUMMARY OF ARGUMENT.

I.

The Court of Appeals misread and misinterpreted the holding of this Court in *Dickinson* v. *United States*, 346 U.S. 389, 74 S. Ct. 152. Petitioner claimed that having established *prima facie*, that he was entitled to a full conscientious objector classification, exempting him from both combatant and non-combatant service (1-O) and his sincerity in making his claim never having been questioned, he was entitled to such 1-O classification in absence of evidence in the record contrary to his claim. The Court of Appeals ruled against petitioner's contention by holding that the *Dickinson* case is inapplicable here because that holding applies only to persons claiming ministerial status, a matter to be decided on objective facts.

The interpretation of the Court of Appeals of the *Dickinson* case is erroneous in face of other holdings of this Court and the holdings of various other Circuits of the United States Court of Appeals.

II.

It was error on the part of the Court of Appeals to hold that the Hearing Officer of the Department of Justice found anything in the absence of the Hearing Officer's report. This holding is particularly grievous because the Trial Court refused to order the Government to produce the Hearing Officer's report notwithstanding petitioner's offer of proof which contradicted substantially all statements contained in the Department of Justice's recommendation (Exh. B-16) (SR 50) referring to the alleged Hearing Officer's report.

The Court of Appeals erred in holding on the basis of the "secret" Hearing Officer's report that petitioner chose, merely as a preference and not as a religious belief, to refuse to manufacture munitions in face of the petitioner's offer of proof rejected by the Trial Court that he would not, because of his religious training, manufacture anything used for destructive purposes. The Court of Appeals erred to the prejudice of the petitioner when it relied on the "secret" Hearing Officer's report as a basis in fact to support the classification given to petitioner, *United States* v. *Wilson*, 215 F. 2d 453, *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403, *Batterton* v. *United States*, 260 F. 2d 233.

III.

The offer of proof on behalf of petitioner's witness, Hagerman (R 24) and his testimony subsequently stricken (R 21 to 23) and petitioner's own offer of proof (R 38) and Government's own Exhibit B-12 (SR 47), was undenied and undeniably showed bias of the Local Board and showed a disregard of the law by that Board. Nevertheless, the Appeal Court held that since the Appeal Board provides a *de novo* proceeding, there is no showing

that the prejudice of the Local Board, if any "corrupted the decision of the Appeal Board". This holding of the Court of Appeals is clearly erroneous because petitioner was entitled to a fair and unbiased consideration on every step of the proceedings. The error of the Court of Appeals is compounded because both the Local Board and the Hearing Officer who saw petitioner face to face were convinced of petitioner's sincerity in making his claim (Exhibit B-16) (SR 50), while the Appeal Board had no such opportunity to face petitioner. Its *de novo* proceedings were based solely on documentary evidence.

It was further error to rely on Government's Exhibit B-16 (SR 50), which was not only attempted to be contradicted by petitioner's various offers of proof, but also by his request for an order to produce the Hearing Officer's report and by the Government's own Exhibit B-12 (SR 47). *Sicurella* v. *United States*, 348 U.S. 385; 75 S. Ct. 403.

IV.

The Court of Appeals in accepting the statements contained in the Department of Justice's recommendation to the Appeal Board (Exhibit B-16) (SR 50) as gospel truth notwithstanding of the repeated attempts on the part of petitioner to show that the recommendations were based on falsehoods, departed from the basic tenet of the Anglo-Saxon law which teaches that one charged with a crime (even when the alleged crime is based on one's religious teaching and belief) must be found guilty beyond a reasonable doubt. The Court of Appeals, contrary to that teaching, deprived petitioner of the benefit of this Court's holding in *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403, and of the benefit of *Batterton* v. *United States*, 260 F. 2d 233.

V.

If it is error to submit the Selective Service file to go to the jury, as the Court of Appeals held, such error is not eliminated by the fact that the jury was permitted to hear oral evidence as to the substance of the contents of that file. The Court of Appeals erred when it held that no prejudice resulted to petitioner. The error was the more prejudicial because petitioner was not permitted by the Trial Court to explain some of the matters, contained in the file which went before the jury and he was not permitted to show which part of the file prepared by him contradicted other documents in the file, *Cox* v. *United States*, 332 U.S. 442, 68 S. Ct. 115, *Smith* v. *United States*, 157 F. 2d 176.

VI.

The Court of Appeals erred to the prejudice of petitioner when it held that the Trial Court's refusal to order the production of Department of Justice's Hearing Officer's report was no error. The Court of Appeals erred because in the instant case the Hearing Officer's report was crucial to prove or disprove petitioner's claim that the Department of Justice's recommendation to the Appeal Board (Exhibit B-16) (SR 50) was false, *Gonzales* v. *United States*, 364 U.S. 59, 80 S. Ct. 1554.

ARGUMENT.

I.

THE COURT OF APPEALS MISREAD THIS COURT'S DECISION IN DICKINSON V. UNITED STATES, 346 U.S. 389, 74 S. Ct. 152, AND THEREBY DEPRIVED PETITIONER OF THE BENEFIT OF THAT HOLDING.

In the opinion of the Court of Appeals (R 60 to 66), *Witmer* v. *United States*, 348 U.S. 375, 75 S.Ct. 392 is cited to the effect that "in that case, the Court interpreted *Dickinson* to hold that there was no basis in fact for the classification because there was no evidence, 'incompatible with' *Dickinson's* proof, to rebut his prima facie case, made out by objective facts". The Court of Appeals looks upon the 'objective facts' as the determinant in this Court's holding in the *Dickinson* case, and therefore, it says "that distinguished Witmer's case from Dickinson's and distinguishes Parker's. In *Witmer* and here, the question cannot be determined on objective facts such as Dickinson's which involved ministerial status". That such narrow interpretation cannot be foisted upon *Dickinson* is clear because this Court in that case relied on *Estep* v. *United States*, 327 U. S. 114, 66 S. Ct. 423, when it quoted therefrom to the effect that ". . . the question of jurisdiction of the Local Board is reached only if there is no basis in fact for the classification which it gave the registrant" (on page 156). The dissenting opinion of Justice Jackson (joined by Justices Burton and Minton) says that "This Court held in *Estep* v. *United States*, 327 U.S. 114, 66 S. Ct. 423, 427, 90 L. Ed. 567, that in a criminal prosecution under § 11 of the Selective Service

Act, the Court must allow the registrant to prove his local draft board acted without jurisdiction in classifying him for service".

Reading the *Dickinson* and *Estep* cases, it is patently clear that the restriction placed by the Court of Appeals for the 7th Circuit in the *Dickinson* case cannot be upheld. Nowhere in the *Dickinson* case did this Court say (nor did any other Court of Appeals as far as our research discloses) that the *prima facie* case made out by a registrant may be disregarded by the Board *except* when one claims ministerial classification, even though the record discloses no *basis in fact* that is contrary to the registrant's claim. But that is exactly what the Court of Appeals held when it said (R 63) "Once *Dickinson's* status was determined prima facie, the Government was required to produce a basis in fact on which the Court could decide his claims were not as stated. In Parker's case the question is whether there is affirmative evidence produced by the Government that he has not painted a complete or accurate picture, *Witmer* v. *United States*, 348 U. S. 375, 382 (1955)." The juxtaposition of the above two sentences in the Court of Appeals' opinion indicates clearly that that Court applies the teaching of the *Dickinson's* decision of this Court solely to those who claim ministerial exemption and then if a *prima facie* case is established by such minister to the exemption, then the Government is required to produce a *basis in fact* contrary to his claim. But not so in the case of this petitioner, because in his case, the Court looks to affirmative evidence that proves that he has not "painted a complete or accurate picture". While it is difficult and probably impossible to fathom the distinction between the content of the term "a basis in fact" and the content of the term "affirmative evidence", nevertheless, it is clear that the Court of Appeals

did restrict the *Dickinson* holding and distinguished that case in disfavor of petitioner.

The Court of Appeals also relies on its own holding in *United States* v. *Simmons* (*Seventh Circuit*), 213 F. 2d 901; (reversed by this Court on other grounds, 348 U.S. 397) and quotes from *Witmer* v. *United States*, 348 U.S. 375, to the effect that " 'When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption', court may not inquire further as to the correctness of Board's order". Petitioner submits that this Court in the *Witmer* case spoke of legal evidence and not something or anything which may be in the record. This Court did not hold in that case, or in any other case for that matter, that it is sufficient for the Government in a Selective Service case to present a letter from the Department of Justice directed to the Appeal Board and look upon the statements therein contained as evidence satisfying the *Witmer* holding, particularly not when as here, petitioner challenged the veracity of many of those statements and when he particularly offered proof (after his testimony was suppressed) to contradict many, if not all the statements in the letter from the Department of Justice.

Petitioner submits that this Court's holding in the *Dickinson* case applies not only to those who claim ministerial exemption, but it applies also to those, as petitioner, whose claim can be tested by subjective evaluation, as against the objective evaluation applied to *Dickinson*. The question of sincerity, truthfulness, honesty and integrity may not be measured by mechanical tools, but measured they can be. In fact it was done by the Local Board, which not only did not question petitioner's sincerity, but stated that it believed him to be so. The Hearing Officer of the Department of Justice, again using

subjective evaluation, found him sincere, and these were the two instances where petitioner was face to face to the inquirer. He submits that the teachings of *Dickinson*, *Sicurella*, *Simmons* and *Witmer* and on the whole of the record here, there is no *basis in fact* for the Board's denial of his claim to be fully exempt from all military service. There is no *basis in fact* for the Board's classifying him as one to be exempted from combatant service only.

On the record and on the law, petitioner submits that his conviction cannot be upheld.

II.

ON THE RECORD THE SOLE GROUND ON WHICH THE COURTS RULED THAT THERE WAS A BASIS IN FACT FOR THE DENIAL OF PETITIONER'S CLAIM FOR EXEMPTION FROM ALL MILITARY SERVICE WAS THE INCIDENT THAT HE WAS EMPLOYED IN A CANDY FACTORY AS A LABORER, A SMALL PART OF THE PRODUCTS OF WHICH FACTORY WERE PURCHASED BY THE ARMED FORCES. THIS RULING OF THE COURTS BELOW WAS ERRONEOUS.

The Government introduced into evidence from petitioner's Selective Service file a letter (Exhibit B-16) (SR 50) that was written by the Department of Justice to the Appeal Board as its recommendation concerning petitioner's classification (R 6, 7). This Exhibit refers to petitioner's appearance before the Hearing Officer appointed by the Department, and states that that officer "was impressed by the truthful and frank attitude of the registrant during the course of the hearing". He concluded that "there is no doubt that the registrant is sincere and a conscientious member of his denomination". The Government also introduced into evidence

as its Exhibit B-18, which shows that the Local Board similarly found petitioner to be sincere and honest, and that he is a good member of his Church. We may assume that the Court of Appeals followed the holding of this Court in the *Dickinson* case, and particularly that it had before it Justice Jackson's dissenting opinion. That dissent holds that "The board must find and record affirmative evidence that he has misrepresented the case—evidence which is then put to the test of substantiality by the courts. In short, the board must build a record". We may so assume that the Court of Appeals did just that, because it is said on page 3 of the opinion (R 62):

> "The Department of Justice hearing officer on Parker's appeal to the Appeal Board found that Parker worked for Community Industries, a Harshmanite enterprise, which produced WAC uniforms, candy for army rations, valves used on naval vessels, and other items usable in war; that Parker did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite 'reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference;' and that Parker subscribed to the beliefs and opinions of the Harshmanites."

If the above paragraph sums up the record which the board built, then we say that such cannot be considered a *basis in fact* on which to classify petitioner contrary to his *prima facie* established case. It cannot be so held because the above summary of the Court of Appeals is taken not from the record, but from the letter of the Department of Justice (Exhibit B-16), (SR 50) which was challenged by petitioner during his trial as to its factuality and veracity.

The Court of Appeals held that the Hearing Officer found certain facts. This is a misstatement, because the Court of Appeals cannot know what the Hearing Officer found because the Trial Court refused to order his report into Court, even though the same Trial Court admitted into evidence the Department of Justice's letter (Exhibit B-16) (SR 50) which was challenged by petitioner as to that portion of it which referred to the Hearing Officer's report.

There is a further misstatement in the Court of Appeals summary quoted above, since the Community Industries employing the petitioner is *not a Harshmanite enterprise,* but it is a simple Illinois corporation owned by the stockholders. The Court of Appeals is further misled by the Department of Justice's letter (Exhibit B-16) (SR 50), when it held that petitioner's employing company "produced WAC uniforms." There is not one word of evidence in the record that such is the case, and the only source that the Court of Appeals had was the challenged letter of the Department of Justice. The Court of Appeals was further misled when it held that the employing company produced "candy and Army rations, valves used on naval vessels and other items usable in war." This is again taken from the Government's Exhibit B-16) (SR 50), the veracity of which was so clearly challenged by petitioner (R. 8, 9). The only evidence as to any kind of goods purchased by the Government from the dress division of the company is the testimony of witness Hagerman, which testimony clearly contradicted the statements made in Exhibit B-16 (SR 50), but this evidence was stricken by the Court on the motion of the Government (R 23). The offer of proof of witness Hagerman (R 24 to 26) clearly contradicts the statement contained in Government Exhibit B-16) (SR 50).

There is a particular error in the above quoted paragraph of the Court of Appeals' opinion which refers to Community Industries as having produced "valves used on naval vessels and other items usable in war." Disregarding the Department of Justice's challenged letter (Exhibit B-16) (SR 50), there is not one iota of evidence remaining in the record that would or could justify the Court of Appeals' holding. Petitioner's witness Hagerman clearly denied that statement (R 20) and when his testimony was stricken, he denied it in his offer of proof (R 24 to 26).

There is testimony of witness Hagerman which refers to valves. However, his testimony (subsequently stricken by the Court on the Government's motion) was to the effect that he, upon the request of defense attorney,

> "checked the records of Community Industries to find out whether or not there was ever any kind of valve used on naval vessels and other items manufactured by the company. I have found that during World War II the division that is now manufacturing garden tractors operated as a machine shop. At that time work was done for the Crane Company in Chicago. At that time some machining was done on valves. That is all I have been able to determine from my checking in the records. Whether those valves were ever used on naval vessels or not, I have no knowledge. The Community Industries made those valves only for the Crane Company" (R 20).

By what stretch of imagination or rather fantasy can it be said on the basis of such record that petitioner's employer produced "valves used on naval vessels"?

There is a further statement in the Court of Appeals' opinion which is difficult to contradict when it says that Community Industries produced "other items usable in

war." We are hard put to think of anything produced that war could not consume, be it bread, oyster forks to be used in officer messes, medicine to be used in military hospitals, bandages, etc. However, petitioner submits that such a general statement may not be considered as a basis for his disqualification as a conscientious objector.

The Court of Appeals also found that petitioner

> "did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite 'reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference'; and that Parker subscribed to the beliefs and opinions of the Harshmanites."

Such a holding is not bottomed on any other part of the record but upon the contradicted statement of the Department of Justice (Exhibit B-16) (SR 50). Otherwise, the record is wholly to the contrary, because a defense witness who is the assistant pastor of the Church of Jesus Christ stated that "the company did not manufacture munitions in any sense of the word" (R 20). This witness' testimony was in direct contradiction to the statement contained in Exhibit B-16 (SR 50), which says that "Community Industries does not manufacture munitions in the ordinary sense of the word." While this testimony was stricken by the Trial Court (R 23) the witness offered proof to the effect that the statement contained in Exhibit B-16 (SR 50) was false to the effect

> "that the minister of the church declared that the church would be willing to manufacture anything in wartime for the Government is not true, that the minister of the church never so stated; that the minister of the church stated that the church members are abiding by all laws adopted by the Govern-

> ment except those which compel them to act against their conscience and against their understanding of the Commands of the Lord; that they would manufacture anything that can be used for civilian purposes because the church members under the teachings of the church do not feel that it is the responsibility of the church what happens to the material . . ." (R 25).

The above offer of proof fairly contradicts, if not destroys, the basis of the Court of Appeals' holding as to petitioner's "'reluctance to manufacture munitions . . . not [as] a matter of religious belief, but merely a matter of preference,' and that Parker subscribed to the beliefs and opinions of the Harshmanites."

Petitioner was just as positive in testifying or attempting to do so contrary to the holdings of the Court of Appeals. In that, he offered proof that he did not tell the Hearing Officer that "although Community Industries does not manufacture munitions in the ordinary sense of the word, they do manufacture other items for military consumption such as tents, WAC uniforms, candy for rations and some sort of valve used on naval vessels" (R 30). To the contrary, the Church to which he belongs, petitioner continued in his offer of proof, never manufactured anything; that it never owned any manufacturing organization, since it is a spiritual and not a business organization; that he stated to the contrary; that his employing company is owned by some members, but it only manufactured items for civilian consumption, some of which may be used for military consumption as well.

Petitioner further offered to prove that he never knew that Community Industries ever manufactured any kind of valve, and to that extent, Government's Exhibit B-16 (SR 50) is false. He never stated to the Hearing Officer

or to anyone else that "it would not be considered immoral or a violation of his Christian duty to manufacture ammunition" and that Exhibit B-16 (SR 50) is further false in that he did not state to the Hearing Officer or to anyone else that the Church members' "reluctance to manufacture munitions is not a matter of religious belief but merely a matter of preference" (R. 40).

Petitioner made an offer of proof after there was an objection by the Government and he was prevented by the Court from answering questions directed to him during his defense in the Trial Court (R 30 to 33). Petitioner attempted to put the record straight, but he was not permitted to do so. However, the rejected offers of proof, that of his witness and of himself, presented a clear picture as to fact against fantasy of Exhibit B-16 (SR 50).

The facts are that petitioner was working for the past five years for the Community Industries Ltd., an Illinois corporation, in the candy division of that company. He was paid on an hourly basis to do packing, shipping and receiving. He had no functions other than that of a clerk and, of course, had no managerial functions whatsoever, nor was he responsible for the sale of the products.

Such employment cannot and ought not be considered a basis in fact for the board's denial of his prima facie established claim for 1-O classification. Nor can his employment as a shipping and receiving clerk be considered a basis in fact for the board's classifying him as 1-A-O, contrary to his claim for full exemption based on his religious training and belief. Petitioner admits that some of the candy which he was handling as shipping and receiving clerk may have been purchased by the Govern-

ment. Nevertheless, he says that even then his employment is not basis in fact as that term was considered by this Court in *Dickinson, Sicurella, Witmer,* and *Gonzales* and other cases wherein the term became material.

It appears to the Petitioner that this Court's distinction between wars and theocratic wars is apropos here and it requires just a logical paraphrasing to support Petitioner's contention. This Court said that a draftee's willingness to fight at Armageddon does not indicate his willingness to participate in war because:

> "Congress had in mind real shooting wars when it referred to participation in war in any form—actual military conflicts between nations of the earth in our time—wars with bombs and bullets, tanks, planes and rockets. We believe the reasoning of the Government in denying petitioner's claim is so far removed from any possible congressional intent that it is erroneous as a matter of law." *Sicurella* v. *United States,* 348 U.S. 385, 75 S.Ct. 403, 406.

The Government's evidence, Exhibit B-16 (SR 50)—so heavily relied on by the Court of Appeals, even though it is an *ex parte* document—shows that Petitioner and other members of the Church of Jesus Christ of Sullivan, Illinois are "strangers in the land"—if not of the Philistines,—then that of the people of Sullivan. It is clear that even though strangers they be, they must find work so that they may live; however, their religious training requires them to labor in accordance with their own beliefs. The Community Industries gives them that opportunity and possibility. To deprive Petitioner of his prima facie established claim to exemption from all military service because he was so employed, would be to say to him that he must choose between starving or forfeiting his right to follow his conscience.

The Court of Appeals for the Seventh Circuit itself held that such choice cannot be exacted even from a conscientious objector when it decided *U.S.* v. *Wilson,* 215 F. 2d 443, wherein Wilson:

> "When asked a hypothetical question as to whether he could continue his job, *i.e.,* as a railroad telegraph operator, if he knew that the trains operated by the railroad were carrying troops to combat service, he stated that he would do so unless the battle front was near his place of employment. When asked how, as a part of his job, he could assist in the routing and scheduling of trains carrying troops to the west coast for overseas combat duty, he stated that so long as he was not told directly that such was their destination he could see no relation between his job and the war effort. He stated finally that there was no capacity in which he could serve so long as it required wearing the uniform of the United States."

The Court, disagreeing with the Government's contention that such employment disqualifies Wilson as a conscientious objector held that:

> "Neither do we think the defendant's employment as a railroad telegraph operator was in any way inconsistent with his claim to exemption as a conscientious objector. Section 6(j) of the Act, 50 U.S. C.A. App. Sec. 456(j), provides exemption for persons 'conscientiously opposed to 'participation in war in any form.' *It would be wholly unrealistic to construe this language to mean that a person whose civilian employment indirectly contributed to the war effort could not, therefore, meet the statutory test for exemption.* Such a construction of the Act would completely nullify the provisions granting exemption to conscientious objectors, for *it is difficult to conceive of any gainful activity which in periods of extensive mobilization and training, would not in some manner aid the common purpose.* Moreover,

> *the Act expressly recognizes that one may engage in civilian work contributing to the national welfare without thereby losing the right to be classified as a conscientious objector.* Section 6(j) provides that persons conscientiously opposed to noncombatant service in the armed forces shall be ordered to perform 'such civilian work contributing to the maintenance of the national health, safety, or interest; as may be considered appropriate by the local board.' It is perfectly clear in this case that the nature of the defendant's civilian occupation could not be a basis in fact for denying him the status of a conscientious objector." (Emphasis ours.)

If we juxtapose the decision of the Court of Appeals for the Seventh Circuit in the *Wilson* and in this case, we must conclude that that Court discovered how to dance *pas de deux* by itself. No composer ever thought that one person can take simultaneous steps in opposite directions. The Court of Appeals here was able to do so.

We submit that the Court of Appeals was correct when it decided the *Wilson* case but grievously erred to the prejudice of the Petitioner in this case. The present holding would make it impossible for any conscientious objector ever to be engaged in any activity which may—however remotely—contribute to the war effort. In fact, a conscientious objector, if the present holding of the Court of Appeals stands, would have to refuse to pay his taxes to the federal government since a large portion of it goes to buy bullets, polaris missiles, hydrogen bombs and other destructive implements of war. This cannot be what Congress had in mind and we are hopeful that this Court will establish clearly by its reversal of the instant case that the law of the land is not as was interpreted by the Court of Appeals.

The pastor of the church wrote to petitioner's Draft Board and the writing was introduced by the government as Exhibit B-7 (SR 34). The pastor's statement, we submit, sums up the problem because,

> "If it is wrong to produce anything which is helpful to the government in time of war then it is wrong to engage in farming at such a time. In fact, logic would force one at such a time to refuse to engage in any constructive effort. . . ."

Petitioner submits that this Court should declare that his and other innocuous employments, even though helpful to the government, is no basis in fact to deprive one of conscientious objector classification, who prima facie established that he is entitled to it. The judgment of the Court of Appeals ought to be reversed.

III.

THE LOCAL BOARD WHILE RECOGNIZING PETITIONER'S SINCERITY IN CLAIMING EXEMPTION FROM ALL MILITARY SERVICE, REFUSED TO GRANT HIM THE REQUESTED CLASSIFICATION ON ADMITTEDLY ILLEGAL GROUNDS. THE APPEAL BOARD CONSIDERED HIM DE NOVO AND LET THE LOCAL BOARD'S CLASSIFICATION STAND. DID THIS DE NOVO CLASSIFICATION OVERCOME THE LOCAL BOARD'S ILLEGAL CONDUCT AND DID IT MEND THE LACK OF DUE PROCESS?

The government introduced into evidence petitioner's Selective Service file including Exhibit B-12 (SR 47). This exhibit was prepared by him within 24 hours following his personal appearance before the local board (R 7 and 31). He did recapitulate the conversation that he had with the local board members as it transpired the day before and the recapitulation was never challenged by the government (R 31). Petitioner testified that:

"Mr. Bone (whose identity was not permitted by the trial court to be established by petitioner because the government objected, but whose identity appears from exhibit B-12 (SR 47) as one of the board members) said they would not give a 1-O classification to anyone at the present time for he did not think it was right for another boy to have to go into service for a boy who did not believe in going into the army or noncombatant service on account of religious belief. He felt the 1-A-O classification was for conscientious objectors" (R 31).

Petitioner argued before the Court of Appeals that such reasoning and the resultant classification based on such reasoning clearly indicates that the denial of his 1-O classification, theretofore prima facie established, was based neither on law nor on the rules and regulations of Selective Service. However, the Court of Appeals did not even inquire into whether the local board's action was contrary to due process or otherwise in violation of the law because of the alleged *de novo* classification by the Appeal Board. The Court of Appeals said on this point (R 64) that:

"The Local Board clerk testified that the Board 'felt they were doing their best to acknowledge the registrant's religion * * *' and thus, according to Parker, showed that emotion rather than the law permeated the Local Board proceeding. The only relevant issue before us in this case is the classification of the Appeal Board in its inder ndent, *de novo* proceeding. This proceeding superseded the Local Board's hearing because there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board. *United States* v. *Van Hook*, 7 Cir., 284 F. 2d 489, reversed and remanded for resentencing, 365 U.S. 609 (1961)" (R 64).

We have no quarrel with the holding that the Appeal Board's classification superseded that of the local board; however, we respectfully disagree with the holding of the Court of Appeals that

> ". . . there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board . . ."

There is no denial as there cannot be, that the local board denied his claim to 1-O classification on some extraordinary nonlegal grounds. The Appeal Board that did not have a chance to see him, nor had a chance to talk to him, classified him *de novo*, but *mirabile dictu* left him in the selfsame classification that was given to him by the local board. However, can it be gainsaid that the clearly expressed bias and prejudice of the local board carried over to and was made its own by the Appeal Board and in consequence, the so-called classification *de novo* was but a sham and nothing more.

Petitioner also submits that the Department of Justice's recommendation, brimming with false statements, did influence the Appeal Board to his great prejudice. Petitioner attempted to testify in detail as to the falsehoods contained in government's Exhibit B-16 (SR 47) and when his testimony was not admitted because of government's objection (R 29-31), he made an offer of proof as to the falsehoods contained in the Department of Justice's recommendation B-16 (R 39 and 40).

In Government's Exhibit B-17 (SR 56-59) he challenged at least in part, the statements made by the Department of Justice in Exhibit B-16 (SR 50-53).

The Court of Appeals seemed to have adopted the argument presented by the government that since Parker did not contradict the Government's Exhibit B-16 (SR 47)

point by point, thereby he is precluded from challenging it in toto, at the time of his trial. Petitioner does not believe that this Court will hold him to such strict limitation, knowing that he is not tutored in law, that he did not finish high school, but only attended it two years (R 26). He believes that the court will not hold him to that strict rule since he was not and could not have been prepared to comply with the strict rules of legal procedure. He was working as a laborer and later as a receiving and shipping clerk from the age of 16 and when he was confronted with the need of answering Government's Exhibit 16 (SR 47) he was 19 years of age (R 26 and SR 50).

In *Conley* v. *Gibson*, 335 U.S. 41, 78 S.Ct. 99, this Court said:

> "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Query: If one misstep by counsel may not do away with a proper decision on the merits, how can a misstep by this untutored petitioner be held against him to the extent that his case be not judged on the merits.

This Court answered this question just recently when in *Foman* v. *Davis*, 83 S.Ct. 227 (1962) it said:

> "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. 'The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.' *Conley*

> v. *Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed. 2d 80. The Rules themselves provide that they are to be construed 'to secure the just, speedy, and inexpensive determination of every action.' Rule 1."

In footnote No. 5 of *Simmons* v. *United States*, 348 U.S. 397, 75 S.Ct. 397 on page 401, this Court held that:

> "Registrants are not to be treated as though they were engaged in formal litigation assisted by counsel. *United States ex rel. Berman* v. *Craig*, 3 Cir., 207 F.2d 888; *Smith* v. *United States*, 4 Cir., 157 F.2d 176."

Petitioner submits his hope, bolstered by the prior decisions of this Court, that the judgment against him will not be permitted to stand because the same is bottomed not on evidence, but rather on guesses on the part of the Court of Appeals and further because there is the red thread of bias and prejudice entwined throughout the proceedings. He was deprived of the due process of law when the court speculated and guessed that the bias of the draft board (if any) "may not" have prejudiced him at all. Not to reverse the judgment of the Court of Appeals for the Seventh Circuit would be tantamount to speculate and guess petitioner into the penitentiary. Petioner believes that this Court will not permit that to happen therefore, he asks that the judgment of the Court of Appeals be reversed.

IV.

THE TRIAL COURT ERRED TO THE GREAT PREJUDICE OF PETITIONER WHEN IT RULED THAT HE MAY NOT PRESENT EVIDENCE WHICH ATTEMPTED TO OVERCOME THE GOVERNMENT'S EX PARTE STATEMENT ALLEGING THAT HIS EMPLOYING COMPANY WAS MANUFACTURING IMPLEMENTS OF WAR. THE COURT OF APPEALS UPHOLDING THE TRIAL COURT ERRED SIMILARLY.

The opinion of the Court of Appeals for the Seventh Circuit holds (R 63) that:

> "Parker also relies upon *Batterton* v. *United States*, 8 Cir., 260 F.2d 233 (1958), which is not in his favor on the facts before us. And each case must 'of necessity be based on the particular beliefs of the individual.' *Sicurella* v. *United States*, 348 U.S. 385, 390 (1955). The court there said the record 'does not even by indirection,' deny Sicurella's sincere religious beliefs. Parker argues the record here as to him is like that record as to Sicurella. But Sicurella's sincerity was admitted and the court said 'we are therefore relieved of the task of searching the record for basis in fact to support a finding of insincerity.' p. 388."

The above must be read to the effect that while Sicurella's sincerity was admitted Parker's was not, even though the record is just to the contrary. The record shows that in those two instances where petitioner had the privilege of a personal appearance, that is before the Local Board and before the Hearing Officer of the Department of Justice, there was a positive finding that he was sincere. These two findings never were challenged or contradicted in any part of the record. Therefore, petitioner submits that the teaching of the *Sicurella* case applies to him, since his sincere religious beliefs were not denied "not

even by indirection", just as there was no such denial in the *Sicurella* case.

The Court of Appeals (R 63) sees

> ". . . no inconsistency in the Department of Justice and the Board recognizing Parker's sincerity of religious belief and the classification based on the admitted fact of his willingness to participate in the production of war goods."

Petitioner protests, as he protested before the Court of Appeals, that there was never any admission on his part but to the contrary, he claimed and attempted to show that it was NOT A FACT and that he was NOT WILLING to produce war goods. Where did the Court of Appeals find such alleged "admitted facts". The opinion of the Court of Appeals gives us the answer because it states (R 63) that:

> "The Department of Justice recommendation discloses Parker's view that 'it would not be considered immoral or a violation of their Christian duty to manufacture ammunitions * * *.' This fact would suffice to rebut Parker's prima facie showing."

So it is as petitioner repeatedly claimed, nothing but the *ex parte* recommendation emanating from the Department of Justice which discloses what the Court of Appeals pleases to call "admitted facts." It's strange, because it is contrary to every precept of criminal procedure and theory underlying it in our jurisprudence, to permit the prosecution to present an *ex parte* statement which allegedly discloses the "view of the accused." It is strange because it is contrary to all precepts that we know of, to accept such *ex parte* statement of the prosecution when the defendant attempted to present evidence in contradiction of such prosecution's statement and when his evidence was rejected by the trial court because of government's objec-

tion. The proof by petitioner denying the veracity of the prosecution's *ex parte* statement was similarly rejected. The Court of Appeals seems to be entirely oblivious of petitioner's proffered denial of the truth of the "Department of Justice recommendation" and, therefore, one wonders what are the facts remaining which the Court of Appeals held to "suffice to rebut Parker's prima facie showing."

The opinion of the Court of Appeals is a haunting one because there is a "leitmotiv" therein which perforce, reminds one of Aesop's Fables (with due apologies where apologies are due). One is reminded of Aesop's little lamb who was accused by the wolf of having disturbed the wolf's drinking water in the flowing river. The fact that the lamb was drinking below the wolf was held for naught, because it may have been the lamb's brother who did the thing charged against the poor little lamb. The fact that the little lamb had no brother was held for naught, because no argument of his was to be considered since the wolf had the strength to make his accusation stick, however baseless those accusations were.

The haunting picture does not disappear, but to the contrary, it comes into strong relief when the Court of Appeals for the Seventh Circuit holds that the Department of Justice recommendation submitted *ex parte* and attempted to be contradicted by petitioner nevertheless is considered to be "fact (which) would suffice to rebut Parker's *prima facie* showing."

Petitioner submits that the Court of Appeals should have inquired why the true facts as to the content of his religious belief were not permitted by the trial court to be disclosed, Why, when he challenged the Department of Justice recommendation and when in support of his challenge he asked for

an order to produce the Hearing Officer's report, did the prosecution object and was the objection sustained? (R 8, 9). Petitioner earnestly says that it was a prejudicial error and a grave one at that for the trial court to strike the testimony of his witness, Hagerman (R 23), and it was a further grave error to reject the offer of proof submitted on behalf of this witness (R 26). It was error to prevent petitioner from testifying in rebuttal of the allegations of the Department of Justice recommendation (Exhibit B-16, SR 50) and it was a further error to reject his offer of proof which unambiguously and head-on challenged the statement of the Department of Justice (R 40). That it was prejudicially erroneous on the trial court's part to prevent petitioner from presenting such testimony is clearly shown by the fact that the Court of Appeals was misled because of the absence of such testimony and accepted "non-facts" and "facts", as in George Orwell's "1984", "newspeak" permits peace to be equated with war, honor with dishonor, etc. Petitioner submits that the Court of Appeals erred when it held (R 63) that unsubstantiated evidence presented by the government *ex parte* in the form of the recommendation of the Department of Justice (B-16, SR 50) did overcome and rebut his prima facie showing. However, the petitioner calls this Court's attention to that sentence in the Court of Appeals opinion where it is said that "this fact would suffice to rebut Parker's prima facie showing." This sentence clearly indicates, whether by inadvertence or otherwise, that the Court of Appeals admitted that petitioner made a "prima facie showing" as to his claim to full exemption from military service (1-O) and therefore, he does not feel it necessary to belabor the point of his *prima facie* case. He will not belabor the absence of basis in fact because he believes that he has shown that no basis in fact exists which would justify the denial

of his *prima facie* established claim to 1-O classification and he submits therefore that the judgment of the Court of Appeals for the Seventh Circuit upholding the judgment of trial court ought to be reversed.

V.

THE SENDING OF THE SELECTIVE SERVICE FILE TO THE JURYROOM WAS AN ERROR PARTICULARLY BECAUSE THE TRIAL COURT PREVENTED PETITIONER FROM EXPLAINING THE CONTENT THEREOF.

Petitioner complained before the Court of Appeals for the Seventh Circuit that he was prejudiced by the trial court's ruling pursuant to which he was prevented from testifying about certain documents in his Selective Service file while the trial court permitted the jury to have the file before it.

In reviewing this matter the Court of Appeals said that the trial court

> "... erred in permitting the S.S.S. file to go to the jury, for, as the court in *Cox* said, '* * * nothing in the file is pertinent to any issue proper for jury consideration.' But we see no prejudice from this fact since the jury had already heard oral testimony of the substance of its contents." (R 65)

Petitioner submits that the logic or illogic of the above holding is not the law, particularly not because it was the prosecution which introduced on oral testimony the contents of the Selective Service file and to boot, over the strenuous objection of petitioner (R 5 to 8). Petitioner believes and so submits that the trial court erred when thereafter, because the objection of the government prevented his witness, Hagerman (R 20) and prevented him

to testify about the selfsame documents which were so introduced by the government (R 27 to 33). Certainly, petitioner should have been given the opportunity to explain what was within the file after the court, in front of the jury, informed him that the whole of the file will go before the jury (R 22). It seems that the Court of Appeals believes that the ADMITTED ERROR of sending the file to the jury was remedied because the jury was permitted to learn about the file by oral testimony too. Petitioner believes that this compounds the error because if the jury had no business to peruse the Selective Service file it had no business to hear oral testimony concerning it.

The Court of Appeals sees no prejudice resulting from the jury seeing the file. The sight of the Court of Appeals does not reach far enough because it is impossible to fathom how much the jury's mind was influenced by the voluminous Selective Service file before it. Petitioner believes that the jury had to be influenced against him when the file was sent out for its inspection and particularly after it heard the court's ruling that petitioner may not testify about the file nor was he permitted to explain the contradictory documents in it. Such a ruling did undoubtedly convince the jury that the weighty documents are sacrosanct, and pursuant thereof, the petitioner perforce had to be found guilty.

Petitioner argued before the Court of Appeals and argues now that the sending of the files to the jury gravely prejudiced him. The prejudice resulted from a pyramiding of the trial court's erroneous ruling. Firstly, the jury heard oral testimony about the Department of Justice recommendation to the Appeal Board (B-16, SR 50 to 53) however, he was not permitted to present testimony that such exhibit contained many misstatements, falsehoods,

particularly with reference to what petitioner allegedly said to the Hearing Officer of the Department of Justice and what such Hearing Officer said to him (R 32). Secondly, the jury was permitted to hear testimony and was given the opportunity to see Government's Exhibit B9 (SR 45) however, petitioner was not permitted to give testimony what, in his remembrance, the actual conversation was between him and the draft board (R 31). When petitioner testified that he wrote Exhibit B-12 (SR 47) "a day after my appearance before the draft board" the government objected to the testimony and moved that the same be stricken. The motion was granted by the trial court and the jury told to disregard it (R 31). Petitioner submits that such and other similar rulings of the trial court pertaining to the Selective Service file could not but prejudice the jury against him and the Court of Appeals is in error when it was unable to see such resulting prejudice.

Petitioner recognizes that the trial court attempted, by its instructions, to make it clear to the jury that the classification given to him is not before it, however, there was never any explanation given to the jury what it ought to do with the file. Was it to be expected that the jury is going to peruse the file but it will close its eyes when it came to the matter of classification. How can that be done by the jury or anyone else, since the whole of the file pertains to petitioner's classification and to nothing else. We believe that the jury did consider the classification and therefore, the file before it resulted in grave prejudice to him as it was said by this Court in *Cox* v. *United States*, 332 U.S. 442 (1947) 457, 68 S.Ct. 115. In that case this Court, in footnote No. 4 refers to *Smith* v. *United States*, (4th Cir.) 157 F.2d 176. In the *Smith* case

the Court of Appeals for the Fourth Circuit, according to the footnote

> "held that the submission of the issue of classification to the jury constituted reversible error."

Because this Court so quoted *Smith* v. *United States* with approval, petitioner submits that on the ground that the jury had the Selective Service before it, the judgment of the Court of Appeals for the Seventh Circuit ought to be reversed.

VI.

PETITIONER WAS PREJUDICED BY THE TRIAL COURT'S REFUSAL TO ORDER THE GOVERNMENT TO PRODUCE THE HEARING OFFICER'S REPORT WHEN SUCH REPORT WAS REFERRED TO IN A GOVERNMENT EXHIBIT IN EVIDENCE AND WHEN THE TRUTHFULNESS OF SUCH EXHIBIT WITH REFERENCE TO THE HEARING OFFICER'S REPORT WAS CHALLENGED BEFORE THE TRIAL COURT.

The government introduced into evidence Exhibit B-16 (SR 50), the letter sent by the Department of Justice to the Appeal Board which concludes that

> ". . . he recommended that registrant (meaning the petitioner) be granted a 1-A-O classification." (SR 52)

This exhibit begins with reference to Section 6 (j) of the Universal Military Training and Service Act pursuant to which

> ". . . an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant (i.e. petitioner) by Mr. F. M. Brittingham, a Hearing Officer for the Department of Justice." (SR 50).

The same exhibit then underlines that

> "The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Résumé of the Inquiry attached hereto and made a part hereof."

The Résumé referred to appears as SR 54-55 and makes no mention whatsoever what the Hearing Officer reported to the Department of Justice. In the body of Exhibit B-16 (SR 51 to 52) reference is made to the alleged statements made by petitioner before the Hearing Officer and to the alleged statements of the Hearing Officer to petitioner.

In Government's Exhibit 17 (SR 56 to 58) petitioner contradicts many of the alleged statements which were imputed to him in Government Exhibit B-16 and those contradictions fully justified his motion for an order upon the government to produce the Hearing Officer's report. The trial court was however, to the contrary opinion and defendant's counsel was not permitted to cross-examine the draft board clerk who testified for the government (when introducing the Selective Service file), and he was not permitted to ask this witness whether the Brittingham report referred to in Government Exhibit B-16 is in the Selective Service file (R 9). Petitioner moved that the government be ordered to produce the Brittingham report but the trial court refused to hear the motion to produce (R 9). When petitioner renewed his motion to produce on the ground that B-16 (SR 50) is not a fair résumé of the Hearing Officer's report and when he again moved for production for the purpose of clarifying the contradictions existing between B-16 and B-17, (both introduced by the government), the motions were denied (R 9).

In the face of the above statement of the record, the holding of the Court of Appeals for the Seventh Circuit is *non sequitur* when it says

> "There was no error in the District Court's ruling which precluded production of the Department of Justice hearing officer's report and no error in denying the motion for acquittal on this ground. Neither the Act nor the regulation, since 1952, requires the report placed in the file. *Gonzales* v. *United States*, 364 U.S. 59 (1960).

This holding is *non sequitur* because petitioner did not claim that the Hearing Officer's report is to be made part of his Selective Service file irrespective of whether that file was made up before or after 1952. However, he maintains that this Court did not hold in *Gonzales* v. *United States*, 364 U.S. 59 as the Court of Appeals seems to read that opinion. To the contrary, in reading the *Gonzales* case of 1960, and applying it to the record here, that case teaches that petitioner's motion to produce the Hearing Officer's report should have been granted. This Court held that:

> ". . . petitioner has failed to show any particular need for the report and notes. While there are now allegations of the withholding of 'favorable evidence developed at the hearing' and a denial of a 'full and fair hearing', no such claim was made by petitioner at any stage of the adminstrative process. Moreover, his testimony at trial never developed any such facts. *In the light of these circumstances,* as well as the fact that the issue at trial in this respect centered entirely on the Department's recommendation, which petitioner repudiated but which both the appeal board and the courts below found supported by the record, we find no relevancy in the hearing officer's report and notes." (page 1557) (emphasis added)

In the *Gonzales* case, petitioner presented no challenge "at any stage of the administrative process" while peti-

tioner did so point-blank when he put into his file Exhibit B-17 (SR 56 to 58).

In the *Gonzales* case the "testimony at trial never developed any facts which would have shown the withholding of "favorable evidence developed at the hearing." In the instant case, to the contrary, petitioner developed or attempted to develop testimony to show that "favorable evidence developed at the hearing" before the Hearing Officer was obscured and was denigrated by the Department of Justice report to the appeal board. (R 20, 23, 25, 29, 30, 31). Petitioner submits that in "*the light of these circumstances* as well as the" facts developed or which could have been developed but for the erroneous ruling by the trial court, the Hearing Officer's report should have been ordered to be brought into court.

During the trial when petitioner was not permitted to testify, he offered proof (R 35 to 41) which has shown without peradventure of doubt that Government's Exhibit B-16 (SR 50) with reference to the hearing before the Hearing Officer was false. The offer of proof denied that the Hearing Officer made the statements attributed to him in Government's Exhibit B-16 and denied the statements attributed to petitioner before the Hearing Officer in the selfsame exhibit.

Under the circumstances of this case, the Hearing Officer's report was the very basis for the Department of Justice recommendation (B-16, SR 50). The repudiation of the statements in that exhibit put the Hearing Officer's report clearly in issue and in consequence the relevance and materiality thereof was plainly established. Due process and the requirement of fair hearing made it mandatory for the trial court to order the production of the Hearing Officer's report. Its failure to do so was prejudicial error.

Selective Service regulation 1626.25 (procedure followed by the appeal board) makes it clear that that board should make its determination on the COMPLETE PRESENTATION OF THE FILES. There was no such presentation because while the file contained the Department of Justice recommendation (B-16, SR 50), it contained neither a fair résumé nor the original report of the Hearing Officer. The challenge by petitioner to Exhibit B-16 undoubtedly put him in a prejudicial position before the Appeal Board because there was nothing before that board to prove whether the challenge was justified or not. Because of the hiatus in the record, the Appeal Board was compelled to make a choice and it did make the choice in disfavor of petitioner. The choice was whether to assume that the Department of Justice recommendation (B-16, SR 50) was a factual and truthful one notwithstanding petitioner's challenge, or whether petitioner was sincere and honest in his challenge notwithstanding the statement contained in Government's Exhibit B-16 which pertained to the Hearing Officer's report. Petitioner says that he was prejudiced and the prejudice can be seen from the fact that the Appeal Board ruled against his claim for full exemption from military service and it undoubtedly did so by concluding that his challenge directed towards Exhibit B-16 was not an honest one and therefore, that board must have further concluded that his sincerity as a whole must be found wanting. The prejudice so created by the trial court's refusal to order production of the Hearing Officer's report was great and irremediable. The prejudice was created by the trial court's refusal to order production of the report and therefore, it must be held that the Court of Appeals for the Seventh Circuit erred when it found "no error in the District Court's ruling which precluded production of the Department of Justice Hearing Officer's report." The judgment of the Court of Appeals ought to be reversed.

CONCLUSION.

In *Franks* v. *United States*, 216 F.2d 266, Judge Pope speaking for the unanimous United States Court of Appeals for the Ninth Circuit, involving an alleged Selective Service law violation, stated a truism that

> "In a criminal prosecution of this kind, the burden is upon the Government to establish the validity of the induction order, and if the matter which we here mention has a bearing upon that validity, (which we will discuss hereafter), then we must view the record in the light most favorable to the appellant as we proceed to construe its meaning."

In the case of *Manke* v. *United States*, 259 F.2d 518, the conviction of Manke, charged with violating the Selective Service Act, was reversed because the court thought

> ". . . that in view of the entire history of this case as shown by the record, and in view of the fact that the Appeal Board had no new evidence before it adverse to appellant's claim of conscientious objection, it would be unrealistic not to conclude that the Appeal Board, in classifying appellant as 1-A was influenced largely if not wholly by the recommendation of the Department of Justice. *Goetz* v. *United States*, 9 Cir., 216 F.2d 270. Since the recommendation, being made a part of the résumé, was founded on a mistaken assumption of fact we hold that its consideration by the Appeal Board amounted to a denial of procedural due process, and therefore appellant was entitled to a judgment of acquittal."

In the case of *Kretchet* v. *United States*, 284 F.2d 561 (1960), the United States Court of Appeals for Ninth Circuit considered the matter "in the light of the teachings

in *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403," and quoted therefrom to the effect that

> "The test is not whether the registrant is opposed to all war, but whether he is opposed, on religious grounds, to *participation* in war."

That test clearly applies to petitioner.

Petitioner submits that the holding of the *Kretchet* case clearly applies to him when in that case the United States Court of Appeals for the Ninth Circuit said:

> "We are unable to determine from the record whether the board, in refusing to sustain appellant's claim for exemption, did so because of appellant's lack of sincerity, or because it believed that appellant's conscientious objections were not based upon religious training and belief, or because appellant was not opposed to war in any form, or whether such action was based upon all three grounds, or on two of them. The advice given by the Department of Justice to the appeal board that it could refuse to sustain appellant's claim for exemption on the ground that he was not opposed to war in any form, in our view, was clearly erroneous and fatally infected the adverse recommendation of the Department of Justice."

This Court speaking of the requirements of due process in *Palko* v. *State of Conn.*, 302 U.S. 319, 58 S.Ct. 149, held that:

> "Fundamental too, in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after a fair trial. The hearing, moreover, must be a real one, not a sham or pretense."

Petitioner submits that in line with the holding of the various Courts of Appeals hereinbefore referred to (except the holding of the Court of Appeals for the Seventh

Circuit but including the holding of that court in the *Wilson* case), the judgment of the Court of Appeals for the Seventh Circuit must be reversed because his trial was not in accordance with the concept of due process and because his trial was not fair but simply a sham and pretense of a trial.

> ". . . A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice." *Rex* v. *Sussex Justices*, 1 K.B.D. (1924) at 259.

Petitioner submits that in his case justice was not done and it is manifest and on the record undoubted that such is the case. For that reason alone, though there are a great many others heretofore argued, the judgment of the Court of Appeals for the Seventh Circuit ought to be reversed.

Respectfully submitted,

FRANCIS HEISLER
MARK L. SCHWARTZMAN
7 South Dearborn Street
Chicago 3, Illinois

CHARLES A. STEWART
Box 3996
Carmel, California
Attorneys for Petitioner.

FRANCIS HEISLER
Of Counsel

Chicago, Illinois
February 13, 1963

APPENDIX.

50 U.S.C. 462; 62 Stat. 622—OFFENSES AND PENALTIES.

(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title (sections 451-454 and 455-471 of this Appendix), or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title (said sections), rules, regulations, or directions who shall knowingly make, or be a party to the making of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title (said sections), or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title (said sections), or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title (said sections), or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title (said sections), or rules, regulations, or directions made pursuant to this title (said sections), or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this (said sections) or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such of-

fenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000.00, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title (said sections) unless such person has been actually inducted for the training and service prescribed under this title (said sections) or unless he is subject to trial by court martial under laws in force prior to the enactment of this title (June 24, 1948). Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing. . . * * * June 24, 1948, c. 625, Title 1, p. 12, 62 Stat. 622.

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

General Principles

1622.1 *General Principles of Classification.*—(a) The Universal Military Training and Service Act, as amended, provides that every male citizen of the United States, every male alien admitted to the United States for permanent residence, and every male alien who has remained in the United States in a status other than that of permanent resident for a period exceeding one year, who is between the ages of 18 years and 6 months and 26 years, shall be liable for training and service in the Armed Forces of the United States, and that persons who on June 19, 1951, were or thereafter are, deferred under the provisions of clause (A) or clause (C) of section 6(c)(2) of such Act shall remain liable for training and service until they attain the age of 28, and that persons who on June 19, 1951, were, or thereafter are, deferred under any other provision of section 6 of such Act shall remain liable for training and service until they

attain the age of 35. Certain exemptions and deferments are specifically provided; others are authorized to be provided by regulations promulgated by the President.

(b) Classification is the key to selection and it must be accomplished in the spirit of the Universal Military Training and Service Act, as amended, in which the Congress has declared "that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

(c) It is the local board's responsibility to decide, subject to appeal, the class in which each registrant shall be placed. Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. The local board will receive and consider all information, pertinent to the classification of a registrant, presented to it. The mailing by the local board of a Classification Questionnaire (SSS Form No. 100) to the latest address furnished by a registrant shall be notice to the registrant that unless information is presented to the local board, within the time specified for the return of the questionnaire, which will justify his deferment or exemption from military service the registrant will be classified in Class I-A.

(d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious or other organization. Each such registrant shall receive equal justice.

1622.2 *Classes.*—Each registrant shall be classified in one of the following classes:

CLASS I

Class I-A: Available for military service.

Class I-A-O: Conscientious objector available for noncombatant military service only.

Class I-C: Member of the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service.

Class I-D: Member of reserve component or student taking military training.

Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.

1622.11 *Class I-A-O: Conscientious Objector Available for Noncombatant Military Service Only.*—(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.14 *Class I-O: Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any

form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.16 *Class I-W: Conscientious Objector Performing Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with order of the local board.

(b) In Class I-W shall be placed any registrant who subsequent to being ordered by the local board to perform civilian work contributing to the maintenance of the national health, safety, or interest has been released from such work by the local board after satisfactorily performing the work for a period of twenty-four consecutive months or has been sooner released from such work by the Director of Selective Service under the provisions of section 1660.21 of this chapter. Each such registrant shall be identified on all records by following his classification with the abbreviation "Rel." and, upon attaining an age beyond the maximum age of liability for military service under the provisions of the selective service law, all such registrants shall be reclassified in Class V-A.

PROCEDURE FOLLOWED BY APPEAL BOARD

1626.26 *Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall tentatively determine whether or not the registrant is eligible for classification in a class lower than Class I-O or in Class I-O. If the appeal board finds that the registrant is eligible for classification in Class I-O or in a lower class, it shall place him in the appropriate class.

(b) If the appeal board tentatively determines that the registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(c) No registrant's file shall be forwarded to the United States Attorney by any appeal board unless the record on the Classification Questionnaire (SSS Form No. 100) shows and the letter of transmittal states that the appeal board reviewed the file and tentatively determined that the registrant should not be classified in Class I-O or in a lower class. Any file forwarded to the United States Attorney without the information required by this paragraph shall be returned to the appeal board.

(d) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraphs (b) and (c) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall

be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(e) Upon receipt of the recommendation of the Department of Justice, the appeal board shall mail a copy thereof to the registrant together with a letter advising the registrant that, within thirty days after the date of such mailing, he may file with the appeal board a written reply concerning the recommendation of the Department of Justice. Upon receipt of the reply of the registrant or the expiration of the period afforded him to make such reply, whichever occurs first, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice. The appeal board also shall give consideration to any reply to such recommendation received from the registrant. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the recommendation of the Department of Justice, a copy of its letter transmitting a copy of such recommendation to the registrant, and any reply to such recommendation received from the registrant.

SECTION 6 (j) OF THE UNIVERSAL MILITARY TRAINING AND SERVICE ACT, 50 U.S.C.A. APPENDIX § 456 (j):

"Nothing contained in this Title (Sections 451-454 and 455-477 of this Appendix) shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, that does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *"

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Nos. 576 and 616

In the Supreme Court of the United States

October Term, 1962

[redacted]

v.

[redacted]

[redacted]

v.

[redacted]

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF [redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 515

RICHARD R. HARSHMAN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 516

MALCOLM LEBERT PARKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the court of appeals are reported at 307 F. 2d 590 and 307 F. 2d 585.

JURISDICTION

The judgments of the court of appeals were entered on August 20, 1962, and petitions for rehearing were denied on September 14, 1962. The petitions for writs of certiorari were filed on October 15, 1962,

and were granted on December 17, 1962. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the recommendations of the Department of Justice to the appeal board may have erroneously suggested that mere willingness to work in war-connected activity was, necessarily and in itself, cause for denying petitioners a I–O classification.

2. Whether there were errors in the procedure followed at petitioners' trials.

STATUTE AND REGULATIONS INVOLVED

The relevant statutory and regulatory provisions are set out in Appendix A, *infra*, pp. 30–34.

STATEMENT

Each of the petitioners was convicted in the United States District Court for the Northern District of Illinois of having wilfully refused to submit to induction into the armed forces. Petitioner Harshman was sentenced to imprisonment for thirty months and fined $1,500. Petitioner Parker was sentenced to imprisonment for two years and fined $1,000. The convictions were affirmed on appeal. 307 F. 2d 585 and 590.

Each of the petitioners is a member of the Harshmanite Church of Sullivan, Illinois. Parker has been a member of the sect since childhood and Harshman joined when he was about fourteen or fifteen years of age. In neither proceeding has any question been raised as to the sincerity of each petitioner's belief in the tenets of his church. The question in this

case is whether each petitioner's expressed personal adherence and agreement to those tenets supports his classification as I–A–O (non-combatant military service), rather than as I–O (conscientious objector), although the latter classification was claimed by each petitioner. The pertinent facts on this issue are as follows:

1. Each petitioner, in seeking a I–O classification, stated that he based his claim of conscientious objection to participation in war in any form on the commandment of Christ to love one's enemies and on the fact that he could not be yoked with unbelievers. (H. S.R. 11, 13, 14, 48–49; P.S.R. 9, 11, 13, 14). Each worked for Community Industries, a business established by the church, the chief purpose of which is to provide employment for the members. Harshman worked as an assembler of piece goods in the dress division of the factory (H.S.R. 5–6, 12); Parker worked as a mechanic readying motors for the production line (P.S.R. 5, 10). Each petitioner in the course of the proceedings before the local board offered a letter by the pastor of the Harshmanite Church to the local board stating that the Harshmanites "are in fact willing to produce anything needed by the government when it is engaged in carrying on war. We do not feel that doing so makes us responsible for war or the waging of war. We would not willingly engage in the production of any article used directly to cause death" (H.S.R. 28; P.S.R. 33–34). Each was classified I–A–O by the local board (H.S.R. 2, 8, 61–62; P.S.R. 2, 7, 45–46, 49). Each appealed and in each case the matter

was referred to the Department of Justice for hearing and recommendation.

2. As to Harshman, a hearing was held in October 1956, at which the petitioner, the pastor of the Harshmanite Church in Sullivan, and the Treasurer of Community Industries were present (see H.S.R. 70). According to the recommendation of the Department of Justice, petitioner told the hearing officer that his objections to military training and service was based largely upon the Commandment, "Thou shalt not kill", and that the members of his faith believed in passive resistance and would not kill even in self-defense (H.S.R. 70). He said that the Harshmanites interpreted the Biblical injunction, "Be not unequally yoked with unbelievers", as meaning that they should not associate with anyone not of the Harshmanite faith, and that to do so would make them "responsible in some degree for the actions of such unbelievers which responsibility they refuse to accept" (H.S.R. 70). Although the hearing officer believed that the petitioner was sincere in his religious beliefs, he nevertheless recommended that petitioner be classified I–A–O because the distinction which petitioner attempted to draw between non-combatant participation in war as a civilian and as a member of the armed forces was untenable (H.S.R. 71).

In November 1956, the Department of Justice recommended to the Appeal Board that petitioner be classified I–A–O since he was willing to work in an industry which was engaged in the manufacture of defense products under government contract. The recommendation recited that the petitioner had

worked in the garment division of Community Industries at a time when the company held government contracts to make WAC uniforms, and that the petitioner was presently employed in the Commissary Department of that factory (H.S.R. 69). The recommendation also recited (H.S.R. 71):

> The registrant stated [to the hearing officer] that it is not a violation of their Christian duty to manufacture goods for military consumption but that they do not accept the responsibility for actions of persons who use such products. He said, however, that by becoming members of the armed forces they would become responsible for such actions. The registrant verified that the beliefs and opinions of the Harshmanites in general are also his own personal beliefs and opinions.

The Department expressed the view that petitioner had failed to sustain his claim with regard to noncombatant military training and service.

In a letter to the Appeal Board in December 1956, petitioner claimed that he was entitled to a 1–O classification on the basis of his religious beliefs, and that the local board had not given "unbiased consideration" to his claim inasmuch as, at the proceedings of December 19, 1955, one member of the board allegedly had said that there was "no such thing" as a 1–O classification and the board chairman allegedly had remarked that petitioner would have to leave the country in order to obtain a 1–O classification (H.S.R. 73). Petitioner said that his objection to military service was not based on the Commandment, "Thou

shalt not kill", as expressed by the hearing officer (Mr. Brittingham) (H.S.R. 75). The letter also stated (H.S.R. 75–76):

> I cannot see how my distinction between participation and non-participation in war can be called untenable. As a civilian I am a free man. As a non-combatant member of the armed forces I am in the Army. It's just that plain. * * * I will not willingly become a member of the armed services, making myself in any sense responsible for the actions of that group. * * * If I'm in any way a member of the United States Army then I am participating in war; else it would not be a part of the Armed Forces. In service in the 1–A–O capacity I would wear an army uniform and be under the same articles of war as any other soldier.

On May 10, 1957, the Appeal Board classified the petitioner 1–A–O (H.S.R. 2, 65, 77). The opinion recited (H.S.R. 77):

> This Appeal Board has noted the memoranda of the local board's actions in determining the classification of this registrant and the Appeal Board does not concur with the conclusions of the local board as stated in such memoranda. This Appeal Board is accordingly ignoring those conclusions of the local board. We note, however, that the registrant and others were allowed complete freedom by the local board and by the Hearing Officer of the Department of Justice to place in the registrant's cover sheet any and all information which the registrant wished to file in support of his claim of conscientious objection.

> We have considered the entire Selective Service file of this registrant as explained above. We have also considered the recommendation of the Department of Justice but are not bound by it. We, the Appeal Board have reached the independent conclusion that this registrant, Mr. Richard R. Harshman, is conscientiously opposed to combat training and service as defined in the law. However, we find that he does not actually conscientiously object to non-combatant service as the law defines it. His classification is therefore determined by this Appeal Board to be I–A–O.

3. Petitioner Parker and four others appeared before a Departmental hearing officer (Mr. Brittingham) in the early part of 1957. According to the Departmental recommendation, petitioner told the hearing officer that his basis for conscientious objection to participation in war in any form was the Commandment, "Thou shalt not kill" and the Biblical injunction "Be not unequally yoked with unbelievers" (P.S.R. 51). As to the latter admonition, petitioner said that association with unbelievers "would make them responsible in some degree for the actions of such unbelievers which responsibility they refuse to accept" (P.S.R. 51). The hearing officer was impressed with petitioner's truthful and frank attitude, and believed that petitioner was a sincere member of his church and by religious training and belief was conscientiously opposed to participation in combatant training and service (P.S.R. 52). He concluded that the distinction which petitioner attempted to

draw between participation in war as a civilian and as a member of the armed forces was "too tenuous" for recognition and recommended that he be classified I-A-O (P.S.R. 52).

In June 1957, the Department recommended that petitioner be classified I-A-O because of his willingness to work in an industry which supported the war effort (P.S.R. 50-53). The recommendation recited (P.S.R. 51-52):

> The registrant explained that although Community Industries does not manufacture munitions in the ordinary sense of the word they do manufacture other items for military consumption such as tents, WAC uniforms, candy for army rations and some sort of valve used on Naval vessels and other items. He said that it would not be considered immoral or a violation of their Christian duty to manufacture ammunition and that their reluctance to manufacture munitions is not a matter of religious beliefs but merely a matter of preference. The registrant concluded by verifying that all of the above beliefs and opinions of the Harshmanites, in general, are also his own personal beliefs and opinions.

The Department concluded that, while the petitioner sustained his claim to conscientious objection to combatant military training and service, he failed to sustain his claim with respect to non-combatant training and service.

In a letter to the Appeal Board of July 30, 1957, petitioner disputed a statement in the report that his objection to service was based on the Commandment

not to kill, asserting that his beliefs were based on the New Testament direction to love one's enemies (P.S.R. 56–57). He said that in the non-combat service he would be under a force whose main purpose is killing. He also said (P.S.R. 58):

> At the hearing with Mr. Brittingham one of the members, that was with me brought out the point that during the last world war the boys in our church were given the (4–E) classification which is the same as the (1–O) classification is now. At that time they were manufacturing war goods. It didn't seem to make any difference then if we were doing war work or not. We haven't weakened or changed any in our beliefs, or are we about to now. The goods that we manufactured for use in the Army or Navy could be used by civilians too. The goods that we manufacture is not directly involved in killing and fighting.

In December 1957, the Appeal Board classified the petitioner I–A–O (P.S.R. 2, 7, 49).

DISCUSSION

I

BECAUSE THE RECOMMENDATION OF THE DEPARTMENT OF JUSTICE TO THE APPEAL BOARD MAY HAVE SUGGESTED AN IMPROPER STANDARD FOR CLASSIFYING A REGISTRANT I–O, THESE CASES SHOULD BE REMANDED TO THE DISTRICT COURT TO ENABLE THE UNITED STATES TO DISMISS THE INDICTMENTS

When the government filed its brief in opposition in these cases, it took the position that there was basis in fact for each petitioner's classification in I–A–O in

that each petitioner's beliefs, as reflected in his own interpretation of the position of his sect, showed a willingness to produce goods directly related to the conduct of war. This position finds support in a number of decisions. See, *e.g.*, *Blalock* v. *United States*, 247 F. 2d 615, 619 (C.A. 4); *Meredith* v. *United States*, 247 F. 2d 622, 623 (C.A. 4); *White* v. *United States*, 215 F. 2d 782, 786 (C.A. 9), certiorari denied, 348 U.S. 970; *United States* v. *Van Hook*, 284 F. 2d 489 (C.A. 7), reversed and remanded for resentencing, 365 U.S. 609; *United States* v. *Moore*, 217 F. 2d 428, 434–435 (C.A. 7), reversed on other grounds, 348 U.S. 966; *United States* v. *Querengasser*, 185 F. Supp. 114, 118 (M.D. Pa.).

Upon further study we have concluded that this formula, as applied to the instant cases, may be too rigid. The critical question in determining whether a registrant should be classified I–O or I–A–O is whether—

> he is found to be conscientiously opposed to participation in * * * noncombatant service * * *.

Demonstrated willingness to manufacture munitions, uniforms or other items intended for military use is a relevant factor in appraising the sincerity of a registrant's claim to a I–O classification. It throws doubt upon the profession of conscientious opposition to noncombatant service because such service, judged by normal human standards, is less intimately related to hatred, violence and killing than the manufacture, for profit, of the weapons of war. If a local draft

or appeal board, upon proper recommendations from the Department of Justice and understanding the true nature of the question, should conclude upon such evidence, plus their observation or appraisal of the registrant, that he was not in fact conscientiously opposed to noncombatant service, we would support the classification in court upon the ground that it had a "basis in fact," *Estep v. United States*, 327 U.S. 114, 122.

But the critical question is one of fact—what is the registrant's subjective belief? The statute leaves no room for a rule of law that willingness to engage in defense production is so incompatible with conscientious objection to military service that, despite unquestioned religious sincerity, a I-O classification may not be assigned to any person willing to work upon goods for the armed forces. By the same token, it is impermissible to jump, invariably, and automatically, from evidence of willingness to work on war goods to the conclusion of lack of a sincere conscientious objection to noncombatant service. There may be instances, albeit infrequent, in which a registrant, although he has no scruple in relation to civilian war-connected activity, may nevertheless be conscientiously opposed, by reason of his religious beliefs, to being part of a military organization.

The Department of Justice, in the exercise of its responsibility under Section 6(j) of the Selective Service Act, has concluded that it is not clear from their text that the Department's recommendations in the instant case have observed the essential distinc-

tion just discussed. To avoid similar doubt or ambiguity in the future, the Attorney General, on March 12, 1963, issued a directive setting forth the policy to be followed by hearing officers and members of the conscientious objector unit of the Department of Justice. The directive, reprinted in Appendix B, pp. 35–36, *infra*, states in pertinent part:

> In every case of a claim for exemption from noncombatant service, the ultimate issue is whether the registrant is "conscientiously opposed to participation in * * * noncombatant service" within the meaning of 50 U.S.C. App. § 456(j). This issue does not, of course, arise unless the registrant has established his eligibility for the lesser exemption from combatant training and service by demonstrating that he is "conscientiously opposed to participation in war in any form." In determining the genuineness and sufficiency under the statutory standards of a registrant's claimed beliefs, it is proper for consideration to be given to his attitudes and beliefs regarding participation in defense work as a civilian. Indeed, a registrant's willingness to earn his living by producing materials for the armed forces may of itself provide an adequate basis for concluding that the registrant is not "conscientiously opposed to participation in * * * noncombatant service." However, such evidence does not always or necessarily have that effect. Cases may be readily imagined in which the registrant's beliefs would permit some degree of participation by him in some kinds of defense-related civilian activity, yet still would qualify him for the exemption. The issue is generally whether the registrant is sincere in his claimed

beliefs, and logical inconsistency on his part, while always relevant as a factor to be considered, is not necessarily decisive.

In the two cases at bar, the Selective Service boards, so far as appears, may have proceeded upon a proper appreciation of the nature of the inquiry. We do not imply that their findings lack the necessary support. In both cases, however, the recommendations of the Department of Justice may have been influenced by, and could have been interpreted by the appeal boards as expressing, the view that mere willingness to work in war-connected activity was, in itself, automatic ground for denial of a 1-O classification. While, of course, the recommendation is not binding on the Selective Service boards, this Court has held that, if the recommendation of the Department has been based on an erroneous legal theory, such error sufficiently infects the administrative process to warrant reversal of the conviction. *Sicurella* v. *United States*, 348 U.S. 389–392.

The Department is of the view that its reports in these cases, even if not erroneous as a matter of law, do set forth a more rigid theory than we believe should have been applied in exercising the functions conferred upon the Department by the statute. Under these circumstances, we think that it is appropriate to move the Court to remand the cases to the court of appeals with directions to vacate its judgments and to direct the district court to vacate its judgments and to dismiss the indictments. *Petite* v. *United States*, 361 U.S. 529.

This motion does not imply that petitioners are entitled to be classified 1-O. The correct classifica-

tion remains to be determined by the Selective Service boards and upon recommendations from the Department of Justice (should reclassification proceedings reach that stage) that clearly articulate the decisive question.

In the remaining sections of this brief, we respond to the contentions upon which petitioners have urged that they are entitled to a reversal of their convictions.

II

THERE WAS NO REVERSIBLE ERROR IN THE PROCEDURES AT PETITIONERS' TRIALS

Introduction and Summary

Before discussing the particular points which petitioners raise, we review briefly, by way of general background, the procedure by which a person claiming conscientious objection is classified. In general, the procedure is similar to that set forth in *United States v. Nugent*, 346 U.S. 1, but various changes were made subsequently, some as the result of decisions by the Court.

A person claiming exemption from combatant or non-combatant service fills out the special form for conscientious objectors and files it with the local board. The registrant has the opportunity to supplement his written proofs of conscientious belief with a personal appearance before the local board, so that the board may talk to him and appraise his sincerity. The registrant may appeal to an appeal board in the event that the local board is not convinced of his claim and denies the exemption. If the appeal board makes a

tentative determination that the registrant is not entitled to a I–O classification, it transmits the entire file to the United States Attorney for the federal judicial district in which the appeal board has jurisdiction for the purpose of obtaining an advisory recommendation on the classification from the Department of Justice. 32 C.F.R. 1626.25.

At the Departmental level, an F.B.I. investigation of the registrant is conducted, the registrant is afforded a hearing before a Departmental hearing officer on the claim to exemption, and the Department formalizes its conclusions on the matter of classification in an advisory recommendation sent to the appeal board pursuant to section 6(j) of the Universal Military Training and Service Act. 32 C.F.R. 1626.25. The registrant, prior to his appearance before the hearing officer, receives a résumé of the investigative reports. *Simmons* v. *United States*, 348 U.S. 397. The hearing is held before a hearing officer who is a private attorney volunteering his services without pay. The registrant may bring an advisor to the hearing and may present witnesses as well as his own testimony. The hearing officer makes a report to the Department, which is reviewed, together with the whole record, by the unit within the Department (the Conscientious Objector Section of the Office of Legal Counsel) charged with the administration of the duties imposed by Section 6(j). A letter of recommendation is then prepared by the Department and sent to the appeal board, together with a copy of the résumé of the F.B.I. reports which had previously been given to the

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registrant. The board sends a copy of the letter of recommendation to the registrant so that he may file a reply with the board. *Gonzales* v. *United States*, 348 U.S. 407. The Selective Service file is also returned to the appeal board.

In the Selective Service system, the ultimate responsibility for classification of registrants has been placed by Congress on the appeal boards. As the Court pointed out in *United States* v. *Nugent*, 346 U.S. 1, 9, "it has long been recognized that neither the Department's 'appropriate investigation' nor its 'hearing' is the determinative investigation and the determinative hearing in each case." Thus, Section 6(j) explicitly provides that the appeal board is not required to follow the recommendation of the Department of Justice. Rather, the appeal board acts, according to the regulations, on the basis of all the information that is before it in the file—that is, the entire Selective Service file (including materials offered by the registrant and the summary of his personal appearance before the local board), the written letter of recommendation by the Department of Justice with the résumé of the investigative reports, and the written reply of the registrant to the Department's recommendation. 32 C.F.R. 1626.24.

The issue of proper classification has always been recognized as one to be finally resolved by the responsible local and appeal boards, and not by the district courts, so long as these boards act within the scope of their jurisdiction, follow appropriate procedures, and do not reach conclusions wholly unsupported by any basis in fact. The district court's function in trying

a defendant for refusal to submit to induction is two-fold: first, to determine whether the classifying board has satisfied the procedural and jurisdictional requirements set out above; and, second, if the board has satisfied these requirements, to submit to the jury the question whether the defendant in fact refused to submit to induction. It is no part of the function of the jury to determine the issue of proper classification, and the function of the district judge in this regard is limited to reviewing an administrative record to determine that the board had some basis in fact for its conclusion, acted within its jurisdiction, and fairly applied the established procedures. In addition, there is some scope for trial court review of the procedures and standards applied by the Department of Justice in making its advisory recommendation to the appeal board.

As we have pointed out above, we believe that the Department of Justice recommendations in this case may have suggested to the appeal board that mere willingness to work in war-connected activity is necessarily and in itself the basis for denial of a I-O classification. This possibility makes appropriate a remand of the case to the district court for vacation of the judgments and dismissal of the indictments. We do not believe; however, that there was any error in the proceedings before the district court.

The district court properly refused to hear evidence bearing on the proper classification of petitioners, for this question was one for the appeal board subject to the limited review of the district court.

The district court also correctly refused to order the production of the hearing officer's report to the Justice Department. This report is merely intra-departmental and is not submitted to the appeal board. Moreover, neither petitioner questioned the accuracy of any relevant aspect of the Department's summation of the hearing officer's report when the cases were pending before the appeal board.

Finally, there was no basis for overturning the determination of the appeal board on any of the grounds open for review in the district court. The petitioners were admittedly subject to the jurisdiction of the classifying draft boards. Their expressions of willingness to manufacture many types of goods intended for military consumption (*supra*, pp. 5, 8, 9) and the similar statements made by the pastor of the Harshmanite church (*supra*, p. 3) provide a basis in fact for the conclusion that they were not "conscientiously opposed to participation in * * * noncombatant service," assuming that the appeal board was not misled as to the applicable standard or ultimate question by the Department recommendation. There was no unfairness in the established administrative procedures followed in classifying the petitioners; any possible impropriety in the standards applied by the local boards was cured by the *de novo* reclassification of the petitioners by the appeal board.

A. PETITIONERS WERE NOT ENTITLED TO INTRODUCE EVIDENCE AT THE TRIAL BEARING UPON THEIR CLASSIFICATIONS

At his trial, each petitioner offered proof that Community Industries never manufactured "war goods," that they were not willing to manufacture goods for military consumption, and that they entertained certain religious beliefs (H.R. 29, 30, 35, 38–40; P.R. 18, 19–23, 24–26, 27, 28–30, 32–33, 34, 37–41).[1] The court declined to permit such evidence, explaining (H.R. 31, 32):

> But I am not trying this man's classification de novo. My obligation was to examine the file as it has been admitted into evidence and to determine whether there was a basis in fact. Now I can't see how it would profit us to get into a dispute here as to whether this witness is right as against some statements that might have been made in the exhibit.

The court in No. 516 ruled to the same effect (P.R. 18, 23, 33).

These rulings were correct inasmuch as it was not the jury's function to determine the propriety of petitioners' classifications or to consider whether petitioners were entitled, on the basis of their religious beliefs, to 1–O exemptions. *Cox* v. *United States*, 332 U.S. 442, 453; *Reed* v. *United States*, 205 F. 2d

[1] In No. 516, the court granted the government's motion to strike the testimony of the witness Felix Hagerman "in so far as it pertain[ed] to the defendant's Selective Service classification," to the tenets of the Harshmanite Church and to "any testimony * * * which related to the products which Community Industries may or may not have manufactured" (P.R. 23).

216, 217–218 (C.A. 9), certiorari denied, 346 U.S. 908; *Roberson* v. *United States*, 208 F. 2d 166, 167–168 (C.A. 10).

This is not even the function of the trial judge. At the criminal trial, the trial judge does have a duty to determine, on the administrative record, whether there was a basis in fact for the particular classification given. If such basis in fact is found to exist, the classification of the Selective Service system is lawful and must be accepted. See *Witmer* v. *United States*, 348 U.S. 375, 380–381; *Estep* v. *United States*, 327 U.S. 114, 122–123; *Cox* v. *United States*, *supra*, 332 U.S. at 453; *Dickinson* v. *United States*, 346 U.S. 389, 396.

The record in each case shows that petitioners were given and took advantage of their opportunities personally to appear before the local boards in support of their claims to I–O exemptions, to traverse the Departmental recommendations to the appeal board, and to have placed in their Selective Service files any material deemed relevant to their religious beliefs and the tenets of the Harshmanite Church. They were properly denied leave, at their criminal trials, to reopen the question of classification or augment the administrative record with new materials.

B. PETITIONERS WERE NOT ENTITLED TO PRODUCTION OF THE HEARING OFFICER'S REPORTS TO THE DEPARTMENT OF JUSTICE

During the administrative proceedings, petitioners received copies of the advisory recommendations of the Department of Justice to the appeal board and résumés of the investigative reports. See *Gon-*

sales v. *United States*, 348 U.S. 407; *Simmons* v. *United States*, 348 U.S. 397. At the trial, the district court refused petitioners' requests for production of the hearing officer's reports (H.R. 22; P.R. 9). Contrary to petitioner's contentions (Pet. Br. No. 515, 52–56; Pet. Br. No. 516, 42–46), these rulings were correct.

In *Gonzales* v. *United States*, 364 U.S. 59, this Court held that there was nothing in the Universal Military Training and Service Act which required that the hearing officer's report be made part of the registrant's file and automatically forwarded to the appeal board (364 U.S. at 63–64):

> Section 6(j) of the Act, as we have held, does require the Department's recommendation to be placed in a registrant's file. *Gonzales* v. *United States*, *supra*. But there is nothing in the Act requiring the hearing officer's report to be likewise turned over to the registrant. While the regulations formerly required that the hearing officer's report be placed in the registrant's file, this requirement was eliminated in 1952. Moreover, the hearing officer's report is but intradepartmental, is directed to the Attorney General and, of course, is not the recommendation of the Department. It is not essentially different from a memorandum of an attorney in the Department of Justice, of which the Attorney General receives many, and to which he may give his approval or rejection. It is but part of the whole process within the Department that goes into the making of the final recommendation to the appeal board.

> It is also significant that neither this report nor the hearing officer's notes were furnished to the appeal board. Hence the petitioner had full opportunity to traverse the only conclusions of the Department on file with the Board.
> * * *

There is an additional reason why the hearing officer's report in this case could not properly be demanded at trial after the administrative proceedings were concluded: neither petitioner, during the course of the administrative proceedings, ever disputed any relevant aspect of the Department's summation of these reports. Petitioners were sent copies of the Department's recommendations to the appeal board. In their letters to the appeal board responding to these recommendations, they challenged only the accuracy of the statements attributed to them by the hearing officer that one of their reasons for non-acceptance of the I-A-O classification was the Commandment, "Thou shalt not kill", stating that they had based their attitudes in this regard on the teachings of the New Testament (H.S.R. 73-76; P.S.R. 56-58). But the sincerity of petitioners' opposition to combatant military training and service was never at issue in the administrative proceedings; there was no dispute that they were conscientiously opposed to killing. Petitioners were given notice of and had full opportunity to challenge, during the administrative proceedings, the statements attributed to them in the Department's summations of their hearings. Neither petitioner disputed any relevant portion of the summations, and their responses to

these summations never advised the appeal board that there was disagreement as to their position on the manufacture of goods for the military services.

The purpose served by requiring that any challenge to the Department's summation of the hearing officer's report be made first at the administrative level is to put the Department of Justice and the Selective Service System on notice of the particular complaint so that any further action deemed necessary may be undertaken at the administrative level. Under such circumstances, the Department might voluntarily transmit copies of the hearing officer's report to the appeal board for consideration and transmission to the registrant, or it might supply supplementary data concerning the Departmental hearing. The appeal board might request the Department of Justice to supply copies of the hearing officer's report or transmit additional information as to the proceedings before the Departmental hearing officer. See 32 C.F.R. 1626.24 and 1626.25. The appeal board might return the Selective Service file to the local board with instructions to supply "additional information" or take additional action to make the file complete so

[2] Petitioner Harshman stated that he could not understand how the Department of Justice could call "untenable" the distinctions which he made between participation and nonparticipation in war (H.S.R. 75–76). Petitioner Parker, in addition to restating his religious objection to all forms of military training and service, challenged the Departmental conclusions by pointing out that the "goods that we manufactured for use in the Army or Navy could be used by civilians too. The goods that we manufacture is not directly involved in killing and fighting" (P.S.R. 56–58).

as to "enable the appeal board to determine the classification of the registrant." 32 C.F.R. 1626.23. There is nothing in the regulations which would deny the appeal board the authority to direct the local board to accord the registrant a further personal appearance in order to amplify the particular matter in dispute. Cf. 32 C.F.R. 1624.1 and 1625.3.

In the absence of any objection to the Department's summation of what each petitioner said to the hearing officer, the appeal board was entitled to assume that the Departmental summation was not disputed and to act on this assumption. It is not open to a registrant to reserve any objection to the accuracy of the Department recommendation until after the appeal board has acted and then challenge the factual basis of the board's conclusion on a ground never presented to the board itself.

C. REVERSIBLE ERROR WAS NOT COMMITTED BY THE DISTRICT COURT IN SENDING PETITIONERS' SELECTIVE SERVICE FILES TO THE JURY DURING DELIBERATIONS

In each case, petitioners' Selective Service files were introduced into evidence as government exhibits. In No. 516, when petitioner Parker sought to introduce testimony concerning his religious beliefs and the tenets of the Harshmanite Church, the court, in sustaining the government objections, told counsel for the petitioner on two occasions that petitioner's religious views were contained in his Selective Service file which it intended to send to the jury (P.R. 22, 29). Petitioner's only objection to this was that some of the documents contained in the file were

hearsay (P.R. 29). In No. 515, the court did not indicate that it would send the Selective Service file to the jury. There is nothing further in either record to indicate whether in fact the court did submit the files to the jury (see H.R. 58, 59; P.R. 55).

Assuming that the court in each case did send the files to the jury, such action, though technically incorrect (see *Cox* v. *United States*, 332 U.S. 442), did not prejudice the petitioners or adversely affect their substantial rights since the court explicitly instructed the jury that they were not to concern themselves with the matter of classification. In each case, the court instructed the jury that the question of determining legality of the particular classification was one exclusively within the province of the trial court; that the jury was not to consider petitioners' classifications because under the law it was not an issue for them to consider; that, after an examination of the Selective Service files, the court had determined that the classifications had basis in fact and were therefore lawful; and that the only question for determination by the jury was whether the petitioners willfully refused to submit to induction (H.R. 51–52; P.R. 48–49). The jury must be presumed to have followed these explicit and clear-cut instructions. *Delli Paoli* v. *United States*, 352 U.S. 232, 242; *Opper* v. *United States*, 348 U.S. 84, 95. In any event, the evidence on the only issue for jury determination—whether petitioners wilfully refused to submit to induction—was virtually undisputed. There is absolutely no doubt that both petitioners knowingly and intentionally refused to submit to induction.

D. PETITIONERS' DE NOVO CLASSIFICATIONS—UPON WHICH THE ORDERS TO REPORT FOR INDUCTION WERE BASED—WERE MADE IN ACCORDANCE WITH PROPER STANDARDS AND CURED ANY PRIOR IMPROPRIETIES OR PREJUDICE AGAINST THE PETITIONERS BY MEMBERS OF THE LOCAL BOARD

There is no substance to petitioners' contention (No. 515, 40–42; No. 516, 30–32), that "clearly expressed bias and prejudice" by members of the local board tainted the entire classification proceedings. Each petitioner was reclassified in new and independent proceedings long after the incidents giving rise to the claims of prejudice, and it was these reclassifications in class I–A–O which formed the basis for the orders to report for induction.

In No. 515, petitioner Harshman was reclassified I–A–O in independent proceedings before the appeal board in May 1957—three and one half years after local board member Glancy allegedly told the petitioner that he did not believe there was "any such thing as a conscientious objector" and almost one and one half years after other alleged similar remarks were made by other board members. Petitioner complained to the appeal board regarding Glancy's remark and the other alleged remarks, stating that the local board had not given him "unbiased consideration" of his claim to a I–O exemption (H.S.R. 45–47, 63–64, 73–76). The appeal board specifically rejected the local board's conclusions regarding petitioner's classification and "accordingly ignor(ed) those conclusions * * *" (H.S.R. 77). After considering the entire Selective Service file and the advisory recommendation of the Department of Justice (see 32

C.F.R. 1626.24), the board reached the "independent conclusion" that the petitioner, while conscientiously opposed to combatant military training and service, did "not actually conscientiously object to noncombatant service" and classified him I–A–O (H.S.R. 77).

The proceedings before the appeal board were not addressed to correcting errors at the lower board level; they were *de novo* classification proceedings by another board which gave "consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant * * *." 32 C.F.R. 1626.26; see 32 C.F.R. 1626.23, 1626.24 and 1626.25. Thus, any prejudice or improprieties at the local board level did not affect petitioner's classification before the appeal board which specifically rejected and ignored the conclusions reached by the local board. The appeal procedure would have little utility in the Selective Service system if errors before a local board, which the appeal board recognized and avoided, were deemed, without more, to infect the appellate classification.

In No. 516, the alleged prejudicial remark in September 1956 by local board member Bone—that the board would not give the I–O exemption to anyone—clearly did not affect petitioner's final reclassification in May 1960. Not only was there a *de novo* classification of I–A–O by the appeal board in December 1957, but in May 1960—three and one half years after the alleged prejudice—the local board reopened and considered anew petitioner's classification (P.S.R. 2, 7, 49, 59). There is nothing in the record to indicate

that either of these reclassifications was affected in any degree by the alleged isolated remark of Mr. Bone or, indeed, by any bias or prejudice against the petitioner or members of his church. Moreover, the 1960 classification—the one which formed the basis for petitioner's order to report for induction—was by a board panel which did not include Mr. Bone.

Under these circumstances, therefore, it was immaterial, so far as petitioners' final classifications were concerned, whether the local board applied proper standards in proceedings long antedating the final actions of the appeal board and, in No. 516, of the local board. Defects or prejudice at the local board level, which did not enter into the final reclassifications could not invalidate those *de novo* proceedings. *Reed* v. *United States*, 205 F. 2d 216, 218 (C.A. 9), certiorari denied, 346 U.S. 908; *United States* v. *Chodorski*, 240 F. 2d 590, 591 (C.A. 7), certiorari denied, 353 U.S. 950; *United States* v. *Hartman*, 209 F. 2d 366, 368 (C.A. 2); *Tyrrell* v. *United States*, 200 F. 2d 8, 11 (C.A. 9), certiorari denied, 345 U.S. 910; *Davis* v. *United States*, 203 F. 2d 853 (C.A. 8), certiorari denied, 345 U.S. 996; *Cramer* v. *France*, 148 F. 2d 801 (C.A. 9).

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[3] Petitioner's classification in September 1956 was by a board vote of 4–0, and was initialed by board members as follows: "EWM", "JAS", "HLB" and "DLW" (P.S.R. 7). Petitioner's classification in May 1960 was by a board vote of 3–0, and was initialed by board members as follows: "JAS", "PLS", and "DDH" (P.S.R. 7).

CONCLUSION

For the reasons stated, the United States moves the Court to remand the cases to the Court of Appeals with directions to vacate its judgments and to direct the district court to vacate its judgments and to dismiss the indictments.

ARCHIBALD COX,
Solicitor General.

RALPH S. SPRITZER,
Assistant to the Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
RICHARD W. SCHMUDE,
Attorneys.

MARCH 1963.

APPENDIX A

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title * * * shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title [said sections], be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the

local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the persons concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration

to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

Selective Service Regulation Number 1626.25, 32 C.F.R. 1626.25, provides:

(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall tentatively determine whether or not the registrant is eligible for classification in a class lower than Class I–O or in Class I–O. If the appeal board finds that the registrant is eligible for classification in Class I–O or in a lower class, it shall place him in the appropriate class.

(b) If the appeal board tentatively determines that the registrant is not entitled to classification in either a class lower than Class I–O or in Class I–O, it shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(c) No registrant's file shall be forwarded to the United States Attorney by any appeal board unless the record on the Classification Questionnaire (SSS Form No. 100) shows and the letter of transmittal states that the appeal board reviewed the file and tentatively determined

that the registrant should not be classified in Class I-O or in a lower class. Any file forwarded to the United States Attorney without the information required by this paragraph shall be returned to the appeal board.

(d) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraphs (b) and (c) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(e) Upon receipt of the recommendation of the Department of Justice, the appeal board shall mail a copy thereof to the registrant together with a letter advising the registrant that, within thirty days after the date of such mailing, he may file with the appeal board a written reply

concerning the recommendation of the Department of Justice. Upon receipt of the reply of the registrant or the expiration of the period afforded him to make such reply, whichever occurs first, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice. The appeal board also shall give consideration to any reply to such recommendation received from the registrant. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the recommendation of the Department of Justice, a copy of its letter transmitting a copy of such recommendation to the registrant, and any reply to such recommendation received from the registrant.

Selective Service Regulation Number 1626.26, 32 C.F.R. 1626.26, provides in pertinent part:

(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

Appendix B

March 12, 1963

Memorandum to Chief, Conscientious Objector Section, Department of Justice.

Re Effect on claims for exemption from noncombatant service of willingness to perform defense work.

In two cases now pending before the Supreme Court of the United States (*Harshman* v. *United States*, No. 515, and *Parker* v. *United States*, No. 516), the recommendations of the Department to the Selective Service Appeal Board appear to be susceptible of an interpretation which would reflect an erroneous view of the law applicable to the above subject. The recommendations can be interpreted as implying that even if a registrant is sincerely and conscientiously opposed to noncombatant service, he cannot, as a matter of law, qualify for an exemption from such service if he is engaged or states that his beliefs would permit him to engage as a civilian in production of materials for the armed forces. I have been advised by the Assistant Attorney General in charge of the Office of Legal Counsel that this view of the law is not taken by your section or by his Office. However, in view of the fact that this question has been raised I wish to insure that all necessary action is taken to eliminate any possibility of misunderstanding that may have arisen on the part of the Department's personnel as to the proper legal standards in this regard.

In every case of a claim for exemption from noncombatant service, the ultimate issue is whether the

registrant is "conscientiously opposed to participation in * * * noncombatant service" within the meaning of 50 U.S.C. App. § 456(j). This issue does not, of course, arise unless the registrant has established his eligibility for the lesser exemption from combatant training and service by demonstrating that he is "conscientiously opposed to participation in war in any form." In determining the genuineness and sufficiency under the statutory standards of a registrant's claimed beliefs, it is proper for consideration to be given to his attitudes and beliefs regarding participation in defense work as a civilian. Indeed, a registrant's willingness to earn his living by producing materials for the armed forces may of itself provide an adequate basis for concluding that the registrant is not "conscientiously opposed to participation in * * * noncombatant service." However, such evidence does not always or necessarily have that effect. Cases may be readily imagined in which the registrant's beliefs would permit some degree of participation by him in some kinds of defense-related civilian activity, yet still would qualify him for the exemption. The issue is generally whether the registrant is sincere in his claimed beliefs, and logical inconsistency on his part, while always relevant as a factor to be considered, is not necessarily decisive.

Please be good enough to inform the Selective Service System of the contents of this memorandum and request that agency to inform its appeal boards. Also, please take all action necessary to insure that Department personnel who are engaged in the processing of appeals in this type of case, including hearing officers, are appropriately informed.

ROBERT F. KENNEDY,
Attorney General.

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